

# EXHIBIT 45

## (Part 3)

**362. STEAM**

Supply of steam power or of steam for heating or other purposes  
Rights, duties, and liabilities incident thereto

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Employers' duties and liabilities, see **LABOR AND EMPLOYMENT**

Municipalities' powers, see **MUNICIPAL CORPORATIONS**

Railroads and steam vessels, use of steam power in operation, see **RAILROADS, URBAN RAILROADS, SHIPPING**

1. Statutory and municipal regulations in general.
2. Franchises and privileges.
3. Licenses and taxes.
4. Inspection and supervision.
5. Supply of steam or steam power.
6. Injuries incident to production or use.
7. Injuries to boilers, pipes, or appliances.

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**363. STIPULATIONS****SUBJECTS INCLUDED**

Agreements between parties to actions or other proceedings or their attorneys or other representatives relating to proceedings therein

Nature, requisites, sufficiency, operation and effect of such agreements in general

Withdrawing or setting aside such stipulations

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Admiralty, stipulations as security in, see **ADMIRALTY**

Attorney's authority to enter into stipulations, see **ATTORNEYS AND LEGAL SERVICES**

Contracts, stipulations in, see **CONTRACTS** and specific topics dealing with particular classes of contracts

Particular proceedings, construction and effect of stipulations relating to, see **APPEARANCE** and other specific topics

Submission of controversy upon agreed statements of facts without action, see **SUBMISSION OF CONTROVERSY**

1. Nature and essentials in general.
3. Matters which may be subject of stipulation.
4. Capacity and authority to enter into stipulation.
5. Supervision and approval of court.
6. Necessity for writing in general.
7. Oral stipulations in court.
8. Form and requisites of writing.
9. Entry, filing, or record.
10. Consideration.
11. Validity of provisions.
12. Rescission or withdrawal from stipulation.
13. Setting aside or relief from stipulation.
14. Construction and operation in general.
  - (1). In general.
  - (2). Stipulations as to process.
  - (3). Stipulations as to pleadings and service thereof.
  - (4). Stipulations as to issues and evidence thereunder.
  - (5). Stipulation to abide result of another case.
  - (6). Stipulations for dismissal or discontinuance.
  - (7). Stipulations as to evidence.
  - (8). Admission of evidence in another action or former trial.
  - (9). Documentary evidence.
  - (10). Agreed statement of facts.
  - (11). Stipulations as to trial.
  - (12). Stipulations as to judgment and review.
15. Conclusiveness and effect.
16. — In general.
17. — Persons concluded.
  - (1). In general.
  - (2). Persons not parties to stipulation.
  - (3). Court.
18. — Matters concluded.
  - (1). In general.
  - (2). Stipulation as to parties.
  - (3). Stipulations as to pleadings and service thereof.
  - (4). Stipulations as to issues and evidence thereunder.

**366. SUBROGATION**

- (5). Stipulation to abide result of another case.
- (6). Stipulation as to evidence.
- (7). Agreed statement of facts.
- (8). Stipulations as to trial.
- (9). Stipulations as to judgment and review.
- 19. Use and enforcement in general.
- 20. Pleading.
- 21. Evidence.

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**365. SUBMISSION OF  
CONTROVERSY**

**SUBJECTS INCLUDED**

Submission of controversies to courts for determination upon a statement of facts agreed to by the parties, without action

Jurisdiction and proceedings of courts on such submission and statement

Requisites, validity, operation and effect of such submission and statement and of the decision thereon

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Judgments rendered on submissions and agreed statements of facts, entry and effect, see JUDGMENT

Statements of cases or questions certified or reported by one court to another for decision, see APPEAL AND ERROR, COURTS and FEDERAL COURTS

Statements of cases reserved upon trial for decision of questions of law, see TRIAL

Stipulations in actions or proceedings, see STIPULATIONS

- 1. Nature and scope of remedy.
- 2. Statutory provisions.
- 3. Controversies which may be submitted.
- 4. Persons who may submit controversy.
- 5. Requisites of statement or agreed case.
- 6. — In general.
- 7. — Form and contents.
- 8. — Signature.

- 9. — Affidavit or other verification.
- 11. Filing statement or case.
- 12. Amendment of statement or case.
- 13. Construction and operation of statement or case in general.
- 14. Estoppel or waiver by submission.
- 16. Dismissal.
- 17. Scope of inquiry and powers of court.
- 18. Trial or hearing.
- 19. Determination and relief awarded.
- 20. Appeal.
- 21. Costs.

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**366. SUBROGATION**

**SUBJECTS INCLUDED**

Substitution in place of creditors, and succession to creditors' rights and remedies, of persons paying debts for which they were not primarily liable, whether payment be in pursuance of an agreement for such substitution or for protection of the interest of the person making it

Rights, liabilities, and remedies of parties in respect of such subrogation

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Insurers' subrogation to rights and remedies of insured, see INSURANCE

Workers' Compensation Acts, subrogation under, see WORKERS' COMPENSATION

- 1. Nature and theory of right.
- 2. Relative liabilities of parties as to debt discharged in general.
- 3. Persons jointly or jointly and severally liable for debt.
  - (1). In general.
  - (2). Mortgage liability.
  - (3). Partners.
  - (4). Tenants in common.
- 4. Parties to bills or notes.
- 5. Sureties or guarantors.
- 6. — In general.

**366. SUBROGATION**

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| <p>7. — Subrogation to rights of creditor.</p> <p>(1). In general.</p> <p>(2). Subrogation to priority of creditors.</p> <p>(3). Sureties of officers.</p> <p>(4). Sureties of guardians, administrators, or trustees.</p> <p>(5). Sureties of surety.</p> <p>(6). Partners as sureties.</p> <p>(7). Sureties or guarantors on bills or notes.</p> <p>(8). Sureties on delivery, bail, or replevin bonds.</p> <p>(9). Sureties on appeal bonds.</p> <p>8. — Subrogation to rights of principal.</p> <p>9. — Subrogation to rights of cosurety.</p> <p>10. Persons acting in representative, fiduciary, or official capacity.</p> <p>(1). In general.</p> <p>(2). Sheriffs or other officer.</p> <p>(3). Executors and administrators.</p> <p>(4). Guardians or trustees.</p> <p>11. Persons liable for loss or injury caused by fault of another.</p> <p>12. Relative interests of parties in property or fund subject to incumbrance discharged.</p> <p>13. Purchasers of incumbered property.</p> <p>14. — In general.</p> <p>14.1. — Assumption or knowledge of incumbrance.</p> <p>14.2. — Liens in general.</p> <p>14.3. — Mortgage or deed of trust.</p> <p>14.4. — Vendor's lien.</p> <p>15. — Purchasers of equity of redemption.</p> <p>16. — Purchasers at execution or other judicial sale.</p> <p>17. Junior mortgagees or lienors.</p> <p>18. Vendors or mortgagors after transfer of mortgaged property.</p> <p>19. Persons interested in administration of estates.</p> <p>20. Necessity for payment of debt or incumbrance.</p> <p>21. — In general.</p> <p>22. — Protection of interest in property.</p> <p>23. Persons making advances for discharge of debt or incumbrance.</p> <p>(1). In general.</p> | <p>(2). Advances or loans on debtor's request or agreement for benefit of incumbrance discharged.</p> <p>(3). Advances or loans on faith of or agreement for new security.</p> <p>(4). Validity and adequacy of new security.</p> <p>(5). Application of advances to debt or incumbrance.</p> <p>(6). Advances for discharge of vendor's lien.</p> <p>(7). Advances for maritime purposes.</p> <p>(8). Advances for discharge of claim for wages.</p> <p>24. Persons making advances for necessities or improvements.</p> <p>25. Persons owning funds or property applied by others to debt or incumbrance.</p> <p>26. Persons making voluntary payments.</p> <p>27. Agreements for subrogation.</p> <p>28. Sufficiency of payment or discharge of debt or incumbrance.</p> <p>29. Mode and effect of subrogation in general.</p> <p>30. Benefit of original obligation.</p> <p>31. Assignment or benefit of security or incumbrance.</p> <p>(1). In general.</p> <p>(2). Parties to bills or notes.</p> <p>(3). Sureties or guarantors in general.</p> <p>(4). Assignment or benefit of mortgage, judgment, or lien.</p> <p>(5). Payment operating as equitable assignment.</p> <p>32. Benefit of remedies of creditor.</p> <p>33. Extent of right to subrogation.</p> <p>(1). In general.</p> <p>(2). Extent and limitation of creditors' rights.</p> <p>(3). Subrogation proportionate to payment.</p> <p>34. Assignment of right to subrogation.</p> <p>35. Waiver or loss of right to subrogation.</p> <p>36. Persons as against whom subrogation may be enforced.</p> <p>37. Defenses and grounds of opposition.</p> <p>38. — In general.</p> <p>40. — Equitable defenses.</p> <p>41. Actions and other proceedings for enforcement.</p> |
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**368. SUICIDE**

- (.5). In general.
  - (1). Nature and form.
  - (2). Conditions precedent.
  - (3). Time to sue, limitations, and laches.
- See also LIMITATION OF ACTIONS.*
- (4). Parties.
  - (5). Pleading.
  - (6). Evidence.
  - (7). Trial.
  - (8). Judgment or decree.
  - (9). Appeal.

**367. SUBSCRIPTIONS**

**SUBJECTS INCLUDED**

Promises in writing by one or more persons to contribute money or other property absolutely or conditionally, for purposes of a charitable, educational, religious, or other public nature

Acceptance of such promises and performance of conditions thereof

Rights and liabilities of the parties thereupon, and actions on such subscriptions

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Subscriptions in consideration of an equivalent to be rendered, see **CONTRACTS**

Corporate stock, corporate or municipal bonds, or other securities, etc., see **CORPORATIONS, MUNICIPAL CORPORATIONS**

Written instruments in general, subscription of, see **SIGNATURES**

- 1. Nature and essentials in general.
- 2. Form and contents.
- 3. Execution and delivery.
- 4. Acceptance.
- 5. Consideration.
- 6. Failure of consideration.
- 7. Validity of assent in general.
- 8. Misrepresentation or fraud.
- 9. Illegality.

- 10. Construction and operation in general.
- 12. Joint or several liability.
- 13. Scope and subject-matter.
- 14. Place and time of payment.
- 15. Conditions and performance thereof.
  - (1). In general.
  - (2). Subscription depending on other subscriptions or donations.
  - (3). Time for performance.
  - (4). Waiver and estoppel.
- 16. Assignment.
- 17. Release or discharge.
- 18. Revocation.
- 19. Abandonment of purpose.
- 20. Payment.
- 21. Actions.
  - (.5). In general.
  - (1). Nature of action and right to sue.
  - (2). Parties.
  - (3). Defenses.
  - (4). Pleading.
  - (5). Evidence.
  - (6). Question for jury.
  - (7). Instructions.

**368. SUICIDE**

**SUBJECTS INCLUDED**

Intentionally killing or attempting to kill one's self

Aiding or advising another to kill himself

Criminal responsibility for such acts

Prosecution and punishment thereof as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Homicide committed in attempting suicide, see **HOMICIDE**

Life insurance, effect of suicide on, see **INSURANCE**

- 1. Nature of act or means, and cause of death.
- 2. Attempts.

**368. SUICIDE**

3. Advising, aiding, or agreeing to commit.
4. Prosecution and punishment.

**369. SUNDAY****SUBJECTS INCLUDED**

The first day of the week as a day of rest

More particularly, its observance by suspension of ordinary business and judicial and other proceedings

Effect of violations of laws requiring observance of the day on validity of acts, transactions, and proceedings affected, and on rights and remedies of persons engaged therein

Prosecution and punishment of such violations as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Holidays generally, see HOLIDAYS

Restrictions on grounds other than the mere character of the day, such as regulation of sale of intoxicants, see ALCOHOLIC BEVERAGES

Time, omission of Sunday in computation, see TIME

1. The day in general.
2. Statutes and ordinances.
3. Acts prohibited in general.
4. Work or labor.
5. Business or occupation.
6. Sports or amusements.
  - (1). In general.
  - (2). Playing baseball.
7. Works of necessity or charity.
8. Observance of other day.
9. Validity of private acts and transactions in general.
10. Validity of contracts and other written instruments.
11. — In general.

12. — Negotiation on Sunday.
13. — Execution of instrument on Sunday.
14. — Delivery of instrument on Sunday.
15. — Ratification.
16. — Rescission.
17. — Performance of contract on Sunday.
18. Actions on Sunday contracts and transactions.
  - 18.1. — In general.
19. — Rights of action and defenses.
  - (1). In general.
  - (2). Wrongful acts of bailee.
20. — Restoration of consideration or benefit.
21. — Pleading in anticipation of defense of illegality.
22. — Pleading violation of law.
23. — Evidence.
24. — Trial, judgment, and review.
25. Injuries received while violating law.
  - 25.1. — In general.
26. — Liability.
  - (1). In general.
  - (2). Injuries to servants.
  - (3). Injuries to person or property of travelers.
27. — Actions.
28. Penalties for violations of law.
29. Criminal prosecutions for violations of law.
  - (.5). In general.
    - (1). Who are indictable.
    - (2). Affidavit, complaint, indictment, or information.
    - (3). Evidence.
    - (4). Trial.
30. Judicial and official acts and proceedings.
  - (1). In general.
  - (2). Commencement of civil actions or proceedings in general.
  - (3). Civil process and notices.
  - (4). Criminal warrants and arrest.
  - (5). Bail or other bonds.
  - (6). Holding court.
  - (7). Verdict and judgment.
  - (8). Discharge of jury without verdict.

**371. TAXATION****370. SUPERSEDEAS****SUBJECTS INCLUDED**

Express suspension, by writ or other mandate or order of court, of enforcement of judgments or orders, or of execution of writs or other process, or of other judicial proceedings

Nature and scope of the remedy in general

Grounds therefor and defenses thereto

To and against whom and as to what judgments, writs, etc., supersedeas is allowed

Jurisdiction over and proceedings to obtain supersedeas

Issuance of writs, orders, etc., of supersedeas, and proceedings thereon

Operation, effect, and enforcement thereof

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Injunctions restraining judicial proceedings, see **INJUNCTION, COURTS**

Orders in actions or other proceedings staying prosecution thereof or particular steps therein, see **ACTION, CREDITORS' REMEDIES, JUDGMENT**, and other specific topics

Review—

Of proceedings in actions by writ of supersedeas, see **APPEAL AND ERROR**

Other writs and proceedings operating by way of supersedeas or stay pending proceedings for review, see **APPEAL AND ERROR, CERTIORARI, HABEAS CORPUS**, and other specific topics

1. Nature and scope of remedy.
2. Judgments, orders, or writs which may be superseded.
3. Grounds.
4. Jurisdiction and authority to grant supersedeas.
5. Proceedings to procure supersedeas.
6. Writ or order of supersedeas, service thereof, and proceedings thereon.
7. Operation and effect.
8. Violation of writ or order and punishment.
9. Appeal and error.

**371. TAXATION****SUBJECTS INCLUDED**

Exaction of regular contributions from persons or property for support of the government in general

More particularly, such contributions imposed by authority of state legislatures

Nature, extent and delegation of power to tax in general

Constitutional and statutory provisions relating thereto

What persons and property are subject to taxation, and exemptions therefrom

For what uses or purposes the power to tax may be exercised

Levy, assessment, lien, collection, and payment of taxes

Remedies for erroneous taxation

Forfeitures and penalties for failure to comply with tax laws

Sales of property for nonpayment of taxes, redemption therefrom, and rights and titles of purchasers

Disposition of proceeds of taxes

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Duties on imports and exports, see **CUSTOMS DUTIES**

Indian tribes, taxes imposed by, see **INDIANS** ⚡225

License fees and taxes on occupations, privileges, etc., see **LICENSES** and specific topics relating to particular occupations

Municipal and other local property taxation and local assessments for public improvements, see **MUNICIPAL CORPORATIONS, TOWNS, EDUCATION, HIGHWAYS**, and other specific topics

Right to unemployment compensation or benefits, see **UNEMPLOYMENT COMPENSATION**

United States, excise and other internal taxes imposed by, see **INTERNAL REVENUE**

I. IN GENERAL, ⚡2000–2049.

II. POLL OR CAPITATION TAXES, ⚡2050–2059.

III. PROPERTY TAXES, ⚡2060–3248.

**371. TAXATION****III. PROPERTY TAXES—Cont'd**

- (A) IN GENERAL, ⚡2060–2084.
- (B) LAWS AND REGULATION, ⚡2085–2165.
  - 1. IN GENERAL, ⚡2085.
  - 2. STATUTORY PROVISIONS, ORDINANCES, AND ADMINISTRATIVE REGULATION, ⚡2086–2099.
  - 3. CONSTITUTIONAL REQUIREMENTS AND RESTRICTIONS, ⚡2100–2119.
  - 4. CONSTITUTIONAL REGULATION AND RESTRICTIONS CONCERNING EQUALITY AND UNIFORMITY, ⚡2120–2149.
  - 5. DOUBLE TAXATION, ⚡2150–2159.
  - 6. TAXATION ACCORDING TO VALUE, ⚡2160.
  - 7. LIMITATION OF RATE OR AMOUNT, ⚡2161–2165.
- (C) LIABILITY OF PRIVATE PERSONS AND PROPERTY IN GENERAL, ⚡2166–2224.
- (D) CORPORATIONS AND CORPORATE STOCK AND PROPERTY, ⚡2225–2264.
- (E) PUBLIC PROPERTY AND INSTITUTIONS, ⚡2265–2284.
- (F) EXEMPTIONS, ⚡2285–2399.
  - 1. IN GENERAL, ⚡2285–2364.
  - 2. PROCEEDINGS TO ESTABLISH AND ENFORCE EXEMPTION, ⚡2365–2399.
- (G) PLACE OF TAXATION, ⚡2400–2409.
- (H) LEVY AND ASSESSMENT, ⚡2410–2729.
  - 1. IN GENERAL, ⚡2410–2429.
  - 2. ASSESSORS AND PROCEEDINGS FOR ASSESSMENT, ⚡2430–2459.
  - 3. MODE OF ASSESSMENT IN GENERAL, ⚡2460–2489.
  - 4. MODE OF ASSESSMENT OF CORPORATE STOCK, PROPERTY, OR RECEIPTS IN GENERAL, ⚡2490–2509.
  - 5. VALUATION OF PROPERTY, ⚡2510–2574.
  - 6. ASSESSMENT ROLLS OR BOOKS, ⚡2575–2619.
  - 7. EQUALIZATION OF ASSESSMENTS, ⚡2620–2639.
  - 8. REVIEW, CORRECTION, OR SETTING ASIDE OF ASSESSMENT IN GENERAL, ⚡2640–2684.

**III. PROPERTY TAXES—Cont'd**

- (H) LEVY AND ASSESSMENT—Cont'd
  - 9. ARBITRATION OR ALTERNATIVE DISPUTE RESOLUTION, ⚡2685–2689.
  - 10. JUDICIAL REVIEW OR INTERVENTION, ⚡2690–2719.
  - 11. EVIDENCE IN GENERAL, ⚡2720–2729.
- (I) LIEN AND PRIORITY, ⚡2730–2749.
- (J) PAYMENT AND REFUNDING OR RECOVERY OF TAX PAID, ⚡2750–2799.
- (K) COLLECTION AND ENFORCEMENT AGAINST PERSONS OR PERSONAL PROPERTY, ⚡2800–2899.
  - 1. IN GENERAL, ⚡2800–2834.
  - 2. SUMMARY REMEDIES AND ACTIONS, ⚡2835–2870.
  - 3. REMEDIES FOR WRONGFUL ENFORCEMENT, ⚡2871–2899.
- (L) SALE OF LAND FOR NONPAYMENT OF TAX, ⚡2900–2999.
- (M) REDEMPTION FROM TAX SALE, ⚡3000–3059.
- (N) TAX TITLES, ⚡3060–3209.
  - 1. TITLE AND RIGHTS OF PURCHASER AT TAX SALE, ⚡3060–3084.
  - 2. TAX DEEDS, ⚡3085–3139.
  - 3. ACTIONS TO CONFIRM OR TRY TITLE, ⚡3140–3189.
  - 4. RIGHTS AND REMEDIES OF PURCHASER OF INVALID TITLE, ⚡3190–3209.
- (O) FORFEITURES AND PENALTIES, ⚡3210–3234.
- (P) DISPOSITION OF TAXES COLLECTED, AND FAILURE OF LOCAL AUTHORITIES TO COLLECT, ⚡3235–3248.
- IV. EXCISE TAXES IN GENERAL, ⚡3249–3259.
- V. EMPLOYMENT TAXES AND WITHHOLDING IN GENERAL, ⚡3260–3299.
- VI. LEGACY, INHERITANCE AND TRANSFER TAXES, ⚡3300–3379.
- VII. GIFT TAXES, ⚡3380–3399.
- VIII. INCOME TAXES, ⚡3400–3599.
  - (A) IN GENERAL, ⚡3400–3419.
  - (B) REGULATION, ⚡3420–3444.
  - (C) INCOMES TAXABLE, ⚡3445–3479.
  - (D) PERSONS LIABLE, ⚡3480–3499.
  - (E) DEDUCTIONS, CREDITS, AND EXEMPTIONS, ⚡3500–3524.

**371. TAXATION****VIII. INCOME TAXES—Cont'd**

- (F) RATES OF TAXATION, SURTAXES, AND ADDITIONAL TAXES, ⚭3525–3529.
  - (G) ASSESSMENT, ⚭3530–3553.
  - (H) PAYMENT, ⚭3554–3559.
  - (I) COLLECTION AND ENFORCEMENT, ⚭3560–3599.
- IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES, ⚭3600–3714.**
- (A) IN GENERAL, ⚭3600–3619.
  - (B) REGULATIONS, ⚭3620–3635.
  - (C) TRANSACTIONS TAXABLE IN GENERAL, ⚭3636–3659.
  - (D) PERSONS SUBJECT TO OR LIABLE FOR TAX, ⚭3660–3671.
  - (E) RATE AND AMOUNT OF TAX, ⚭3672–3677.
  - (F) SELECTIVE TAXES, ⚭3678–3685.
  - (G) LEVY AND ASSESSMENT, ⚭3686–3696.
  - (H) PAYMENT, ⚭3697–3704.
  - (I) COLLECTION AND ENFORCEMENT, ⚭3705–3714.

**I. IN GENERAL.**

- 2000. In general.
- 2001. Nature of taxes.
- 2002. Distinguishing “tax” and “license” or “fee”.
- 2003. Nature and source of taxing power.
- 2004. Power of state.
- 2005. — In general.
- 2006. — United States entities, property, and securities.
- 2007. — Corporations created by or chartered in other states.
- 2008. Territories.
- 2009. Public purpose.
- 2010. — In general.
- 2011. — Particular purposes.
- 2012. — Special or local purpose, and benefit to locality taxed.
- 2013. Power of legislature in general.
- 2014. Mode of exercise of legislative power.
- 2015. Delegation of power.
- 2016. — In general.
- 2017. — Creation of taxing district.
- 2018. Exercise of delegated power.
- 2019. Surrender or suspension of power.
- 2020. Estoppel to exercise power.
- 2021. Invalid or defective exercise of power.
- 2022. — In general.

**I. IN GENERAL.(Cont'd)**

- 2023. — Power to cure defects or irregularities.
- 2024. Statutory provisions.
- 2025. — In general.
- 2026. — Purpose.
- 2027. — Construction and operation.
- 2028. — Validity.
- 2029. — Retroactive operation.
- 2030. What law governs.
- 2031. Preemption.
- 2032. Local ordinances.
- 2033. Administrative agencies in general.
- 2034. Rules and regulations in general.

**II. POLL OR CAPITATION TAXES.**

- 2050. In general.
- 2051. Constitutional and statutory provisions.
- 2052. Place of taxation.
- 2053. Levy of poll or capitation tax.
- 2054. Persons subject.

**III. PROPERTY TAXES.****(A) IN GENERAL.**

- 2060. In general.
- 2061. Nature of property tax.
- 2062. Power of state.
- 2063. — In general.
- 2064. — United States entities, property, and securities.
- 2065. — Corporations created by other states and shares therein.
- 2066. — Corporations chartered in more than one state.
- 2067. Power of territories.
- 2068. Territorial limitations of power.
- 2069. Public purpose.
- 2070. — In general.
- 2071. — Particular purposes.
- 2072. — Special or local purpose, and benefit to locality taxed.
- 2073. Power of legislature in general.
- 2074. Mode of exercise of legislative power.
- 2075. Delegation of power.
- 2076. — In general.
- 2077. — Creation of taxing district.
- 2078. Exercise of delegated power.
- 2079. Surrender or suspension of power.
- 2080. Estoppel to exercise power.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2081. Invalid or defective exercise of power.
- 2082. — In general.
- 2083. — Power to cure defects or irregularities.

**(B) LAWS AND REGULATION.****1. IN GENERAL.**

- 2085. In general.

**2. STATUTORY PROVISIONS, ORDINANCES, AND ADMINISTRATIVE REGULATION.**

- 2086. In general.
- 2087. Purpose.
- 2088. Construction and operation.
- 2089. Validity.
- 2090. Retroactive operation.
- 2091. What law governs.
- 2092. Preemption.
- 2093. Local ordinances.
- 2094. Administrative agencies in general.
- 2095. Rules and regulations in general.

**3. CONSTITUTIONAL REQUIREMENTS AND RESTRICTIONS.**

- 2100. In general.
- 2101. Private persons and property in general.
- 2102. Transfers and registrations of instruments.
- 2103. Corporations and corporate stock and property.
- 2104. Levy and apportionment.
- 2105. Assessors and proceedings for assessment.
- 2106. Mode of assessment in general.
- 2107. Mode of assessment of corporate stock, property, or receipts.
- 2108. Assessment rolls or books.
- 2109. Lien and priority.
- 2110. Payment and refunding or recovery of tax paid.
- 2111. Collectors and proceedings for collection in general.
- 2112. Summary remedies and actions.
- 2113. Remedies for wrongful enforcement.
- 2114. Title and rights of purchaser at tax sale.
- 2115. Tax deeds.
- 2116. Actions to confirm or try title.

**III. PROPERTY TAXES.(Cont'd)**

- 2117. Rights and remedies of purchaser of invalid title.
- 2118. Forfeitures and penalties.
- 2119. Restrictions as to purposes of taxation.

**4. CONSTITUTIONAL REGULATION AND RESTRICTIONS CONCERNING EQUALITY AND UNIFORMITY.**

- 2120. In general.
- 2121. Constitutional requirements and operation thereof.
- 2122. What constitutes tax within constitutional requirement.
- 2123. Discrimination between realty and personality.
- 2124. Discrimination between residents and nonresidents or aliens.
- 2125. Discrimination between corporations.
- 2126. Mode or form of discrimination in general.
- 2127. Discrimination as to rate or amount.
- 2128. Discrimination as to mode of assessment or valuation.
- 2129. Tax on gross earnings or receipts of corporations.
- 2130. Discrimination as to time of making assessment.
- 2131. Fixing situs of personal property for purpose of taxation.
- 2132. Payment, enforcement, and disposition of taxes collected.
- 2133. Subjects of taxation.
- 2134. Classification of subjects, and uniformity as to subjects of same class.
- 2135. — In general.
- 2136. — Corporations and corporate property in general.
- 2137. — Foreign corporations.
- 2138. — Tax on credits.
- 2139. Different localities.
- 2140. Local taxes, and uniformity as to same locality.
- 2141. Taxation of individuals and corporations.

**5. DOUBLE TAXATION.**

- 2150. In general.
- 2151. Taxation of same property in another state or district.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2152. Tax on mortgages and on property mortgaged.
- 2153. Taxation of corporations in general.
- 2154. Tax on tangible corporate property and on capital stock.
- 2155. Tax on capital stock or other corporate property and on shares of stockholders.
- 2156. Tax on property and on income or proceeds thereof.

**6. TAXATION ACCORDING TO VALUE.**

- 2160. In general.

**7. LIMITATION OF RATE OR AMOUNT.**

- 2161. In general.
- 2162. Taxes for special purposes.

**(C) LIABILITY OF PRIVATE PERSONS AND PROPERTY IN GENERAL.**

- 2166. In general.
- 2167. Statutory provisions.
- 2168. Persons liable in general.
- 2169. Nature of property.
- 2170. — In general.
- 2171. — Real property in general.
- 2172. — Mines, mining rights, and minerals.
- 2173. — Riparian and other water rights and waterworks.
- 2174. — Buildings and other improvements on land.
- 2175. — Incorporeal rights and interests in land.
- 2176. — Personal property in general.
- 2177. — Crops and other products of the soil.
- 2178. — Domestic animals.
- 2179. — Shipping.
- 2180. — Stock in trade of merchant or manufacturer.
- 2181. — Money and deposits of money.
- 2182. — Credits, investments, and securities in general.
- 2183. — Mortgages.
- 2184. — Interests under contracts.
- 2185. — Annuities.
- 2186. Ownership or possession of property, and persons to whom taxable.

**III. PROPERTY TAXES.(Cont'd)**

- 2187. — In general.
- 2188. — Particular estates or interests in property.
- 2189. — Property mortgaged or otherwise encumbered.
- 2190. — Equitable estates or interests in general.
- 2191. — Property held in trust or other fiduciary capacity.
- 2192. — Property of decedents' estates.
- 2193. — Goods in possession or under control of or consigned to merchants, factors, or manufacturers.
- 2194. — Property in custody of agent or depositary.
- 2195. — Property in custody of the law.
- 2196. — Occupancy or possession.
- 2197. — Joint or several ownership or possession.
- 2198. — Partnership property.
- 2199. — Unoccupied or unseated land.
- 2200. Property of nonresidents or aliens.
- 2201. — In general.
- 2202. — Property held in trust or other fiduciary capacity.
- 2203. — Property in custody of agent.
- 2204. — Property taxed or located in another state.
- 2205. — Property temporarily in state or in transit.
- 2206. — Nonresident lands.
- 2207. — Credits, investments, and securities in general.
- 2208. — Possession or control, of resident agent or trustee, of investments or securities.
- 2209. — Securities held by nonresident in another state.
- 2210. — Mortgages.
- 2211. Situs of property.
- 2212. — In general.
- 2213. — Decedents' and other estates under ancillary administration.
- 2214. — Property temporarily within jurisdiction.
- 2215. — Property in transit.
- 2216. — Property taxed in other jurisdiction.
- 2217. Tax on actions or proceedings therein.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2218. Tax on transfers and registration of instruments.
- 2219. Contracts to assume and pay taxes.
- 2220. Conveyances and contracts to evade taxation.
- 2221. Persons or property erroneously left untaxed.
- 2222. Property sold or forfeited to state on nonpayment of tax.
- 2223. Estoppel to dispute liability.

**(D) CORPORATIONS AND CORPORATE STOCK AND PROPERTY.**

- 2225. In general.
- 2226. Nature and grounds of liability.
- 2227. — In general.
- 2228. — Time when liability attaches, and amount of tax.
- 2229. Statutory provisions.
- 2230. Corporations and associations subject to taxation in general.
- 2231. Classification for purpose of taxation.
- 2232. Corporate property in general.
- 2233. Corporate franchises and privileges.
- 2234. Capital and stock.
- 2235. — In general.
- 2236. — Nature and taxation otherwise of property represented.
- 2237. Corporate business, earnings, or receipts.
- 2238. Shares of stockholders.
- 2239. Dividends and surplus.
- 2240. Corporate indebtedness and securities.
- 2241. Ownership and possession of property.
- 2242. Financial institutions.
- 2243. Insurance companies; premiums and receipts.
- 2244. Express and other transportation companies.
- 2245. Railroads.
- 2246. Telecommunication companies.
- 2247. Electric companies.
- 2248. Gas companies.
- 2249. Mining companies.
- 2250. Water companies.
- 2251. Manufacturing corporations.
- 2252. Business corporations.
- 2253. Foreign corporations.
- 2254. — In general.

**III. PROPERTY TAXES.(Cont'd)**

- 2255. — Carrying on business within state.
- 2256. — Franchises and privileges.
- 2257. — Property in general.
- 2258. — Capital employed or invested within state.
- 2259. — Earnings or receipts.
- 2260. Shares in foreign corporations.
- 2261. Securities issued by foreign corporations.
- 2262. Stock or property erroneously left untaxed.
- 2263. Estoppel to dispute liability.

**(E) PUBLIC PROPERTY AND INSTITUTIONS.**

- 2265. In general.
- 2266. Constitutional and statutory provisions.
- 2267. Public property and rights and interests therein.
- 2268. — In general.
- 2269. — Entries and sales.
- 2270. — Possessory rights.
- 2271. — Grants.
- 2272. — Improvements.
- 2273. Indian lands and other property.
- 2274. Property of state or municipality.
- 2275. — In general.
- 2276. — Public improvements and works.
- 2277. — Public buildings and institutions.
- 2278. — Property held or used for other than public purpose.
- 2279. Property dedicated to public use.
- 2280. Agencies and instrumentalities of government in general.
- 2281. Offices and fees and salaries of public officers.
- 2282. Bonds or other securities issued by state or municipality.

**(F) EXEMPTIONS.****1. IN GENERAL.**

- 2285. In general.
- 2286. Power to exempt in general.
- 2287. Constitutional provisions.
- 2288. — In general.
- 2289. — Effect of requirement of equality and uniformity.
- 2290. — Restrictions on exemptions.



**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2291. — Grants of exemptions or of authority to exempt.
- 2292. Statutory provisions in general.
- 2293. Exemptions in corporate charters.
- 2294. Exemption by limitation of amount of tax.
- 2295. Exemption by commutation of tax.
- 2296. Delegation of power to exempt.
- 2297. Surrender of power to exempt.
- 2298. Construction and operation of exemptions in general.
- 2299. — In general.
- 2300. — General rules of construction.
- 2301. — Commencement of exemptions.
- 2302. — Compliance with conditions of acquiring exemption.
- 2303. Irrevocability of exemptions.
- 2304. — In general.
- 2305. — Exemptions in corporate charters.
- 2306. — Reservation of power to alter or amend.
- 2307. — Consideration.
- 2308. Revocation or other termination.
- 2309. Nature or use of property exempt in general.
- 2310. Amount of exemption and value of property.
- 2311. Public property in general.
- 2312. Public lands granted in aid of railroads or other improvements.
- 2313. Property of United States.
- 2314. Bonds or other securities issued by United States.
- 2315. Property of local government or other public corporations.
- 2316. Bonds or other securities issued by state or municipality.
- 2317. Property of individuals in general.
- 2318. Improvements on land.
- 2319. Crops and other products of the soil.
- 2320. Domestic animals.
- 2321. Household goods.
- 2322. Tools and implements of trade.
- 2323. Professional books and instruments.
- 2324. Pension and bounty money.
- 2325. Financial institutions.
- 2326. Insurance companies and policies.
- 2327. Railroad companies and property.

**III. PROPERTY TAXES.(Cont'd)**

- 2328. Telecommunications companies.
- 2329. Mines and mining claims and companies.
- 2330. Water rights, waterworks, and irrigation and other water companies.
- 2331. Manufacturing companies.
- 2332. — In general.
- 2333. — Machinery, materials, and other property.
- 2334. — Corporate capital and stock in general.
- 2335. — Foreign corporations and capital and property thereof.
- 2336. Money, investments, or securities of nonresidents.
- 2337. Charitable or benevolent institutions, and property used for charitable purposes in general.
- 2338. — In general.
- 2339. — Character, purpose, and activities of institutions; incidence of benefits.
- 2340. — Character, extent, and ownership of property.
- 2341. — Occupation and use of property.
- 2342. — Property leased or otherwise used for profit.
- 2343. Health care facilities and institutions.
- 2344. Beneficial associations.
- 2345. Schools, colleges and universities, and property used for educational purposes.
- 2346. — In general.
- 2347. — Nature, ownership, occupancy, or use of property in general.
- 2348. — Contiguity of property.
- 2349. — Residences of officers, professors, and teachers.
- 2350. — Property leased or otherwise used for profit.
- 2351. — Trust and endowment funds.
- 2352. — Public or charitable character of institution.
- 2353. — Public schools and colleges.
- 2354. Libraries, museums, and collections for purposes of science or art.
- 2355. Religious societies and institutions, and property used for religious purposes.
- 2356. Cemeteries and burial grounds and lots.
- 2357. Taxes affected by exemptions.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2358. Transfer of exemption or of property exempt.
- 2359. Consolidation of exempt corporation with others.
- 2360. Waiver of or estoppel to claim exemption.
- 2361. Acquisition of exempt property to evade taxation.

**2. PROCEEDINGS TO ESTABLISH AND ENFORCE EXEMPTION.**

- 2365. In general.
- 2366. Proceedings before board or officer.
- 2367. — In general.
- 2368. — Jurisdiction.
- 2369. — Application.
  - (1). In general.
  - (2). Time.
  - (3). Sufficiency.
- 2370. — Mode and course of procedure in general.
- 2371. — Parties.
- 2372. — Standing; right of review.
- 2373. — Matters considered; scope of issues.
- 2374. — Determination and relief.
- 2375. — Further administrative review.
- 2376. Judicial review and intervention.
- 2377. — In general.
- 2378. — Time.
- 2379. — Parties.
- 2380. — Standing; right of review or action.
- 2381. — Preservation and reservation in lower tribunal; exhaustion.
- 2382. — Matters considered; scope of issues.
- 2383. — De novo review.
- 2384. — Presumptions.
- 2385. — Discretion.
- 2386. — Questions of law or fact.
- 2387. — Harmless error.
- 2388. — Determination and relief; injunction.
- 2389. Subsequent review.
- 2390. Evidence.
- 2391. — In general.
- 2392. — Presumptions and burden of proof.

**III. PROPERTY TAXES.(Cont'd)**

- 2393. — Admissibility.
- 2394. — Weight and sufficiency.
- 2395. Questions of law or fact.

**(G) PLACE OF TAXATION.**

- 2400. In general.
- 2401. Constitutional and statutory provisions.
- 2402. Real property.
- 2403. Personal property.

**(H) LEVY AND ASSESSMENT.****1. IN GENERAL.**

- 2410. In general.
- 2411. Nature of levy.
- 2412. Powers of legislature.
- 2413. Powers of county or other local authorities.
- 2414. Making of levy by legislature.
- 2415. Apportionment to counties or other subdivisions.
- 2416. Making of levy by local authorities.
- 2417. Requisites and validity of levy in general.
- 2418. — In general.
- 2419. — Certificate as to rate or amount voted or required, and estimate of expenditures.
- 2420. — Time and place of making levy.
- 2421. — Notice of levy.
- 2422. — List or assessment on which tax is levied.
- 2423. — Record and evidence of levy.
- 2424. — Defects and objections and liabilities arising therefrom.
- 2425. Ascertainment and statement of amount of levy.
- 2426. Statement of purpose of tax.
- 2427. Specification of items and amount thereof.
- 2428. Determination of rate of taxation.

**2. ASSESSORS AND PROCEEDINGS FOR ASSESSMENT.**

- 2430. In general.
- 2431. Nature and necessity of assessment.
- 2432. Statutory provisions.
- 2433. Appointment, qualification, and tenure of assessors.
- 2434. — In general.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2435. — State boards and officers.
- 2436. — Local boards and officers.
- 2437. — Deputies and assistants.
- 2438. Compensation of assessors.
- 2439. Authority to make assessment.
- 2440. — In general.
- 2441. — Corporations and corporate property in general.
- 2442. — Railroads.
- 2443. Time and date of assessment.
- 2444. Powers and proceedings in making assessments in general.
- 2445. — In general.
- 2446. — Defects and errors.
- 2447. Determination as to persons and property taxable.
- 2448. Determination as to ownership or possession of property.
- 2449. Determination as to place of taxation.
- 2450. Liabilities for negligence or misconduct.
- 2451. Liabilities on official bonds.
- 2452. Criminal responsibility.

**3. MODE OF ASSESSMENT IN GENERAL.**

- 2460. In general.
- 2461. Statutory provisions.
- 2462. List or statement by taxpayer.
- 2463. — In general.
- 2464. — Necessity in general.
- 2465. — Notice or demand.
- 2466. — Making and requisites in general.
- 2467. — Description of property or other subject-matter.
- 2468. — Statement of debts to be deducted.
- 2469. — Omissions and defects.
- 2470. — Operation and effect in general.
- 2471. — Prosecution for failure to make, or for making false list or statement.
- 2472. Proceedings by assessors for discovery and valuation of property.
- 2473. — In general.
- 2474. — Proceedings on failure to make or making false list or statement.
- 2475. — Discovery and inspection.
- 2476. Nature or ownership of property.
- 2477. — In general.

**III. PROPERTY TAXES.(Cont'd)**

- 2478. — Real property in general.
- 2479. — Unoccupied or unseated land.
- 2480. — Land of nonresidents.
- 2481. — Separate parcels of land.
- 2482. — Personal property in general.
- 2483. — Property of decedents' estates.

**4. MODE OF ASSESSMENT OF CORPORATE STOCK, PROPERTY, OR RECEIPTS IN GENERAL.**

- 2490. In general.
- 2491. Duties of assessors in general.
- 2492. Statutory provisions.
- 2493. Report or statement by corporation.
- 2494. — In general.
- 2495. — Property, capital, and liabilities.
- 2496. — Business, earnings, receipts, and dividends.
- 2497. — List of stockholders.
- 2498. — List of holders of securities.
- 2499. — Foreign corporations.
- 2500. — Conclusiveness and effect.
- 2501. Proceedings for discovery and valuation of property.
- 2502. — In general.
- 2503. — By state boards or officers.
- 2504. — By local assessors.

**5. VALUATION OF PROPERTY.**

- 2510. In general.
- 2511. Transfers.
- 2512. Real property in general.
- 2513. — In general.
- 2514. — Matters considered and methods of valuation in general.
- 2515. — Market value and sale price; comparable sales.
- 2516. — Replacement cost; depreciation and obsolescence.
- 2517. — Capitalized income.
- 2518. — Appurtenances, easements, and improvements.
- 2519. — Interests less than fee in general; leasehold interests.
- 2520. Valuation of particular real property.
- 2521. — In general.
- 2522. — Platted or unplatted property.
- 2523. — Rural or agricultural lands; open spaces.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2524. — Timber and timber lands.
- 2525. — Mineral or mining property.
- 2526. — Utilities in general.
- 2527. — Water supply property; dams.
- 2528. Deduction of encumbrances on real property.
- 2529. Personal property in general.
- 2530. Credits, investments, and securities.
- 2531. Increase of valuation of taxpayer.
- 2532. Increase on failure of taxpayer to make list or statement.
- 2533. Tax on registration of instrument.
- 2534. Deduction of indebtedness in general.
- 2535. — In general.
- 2536. — From credits.
- 2537. — Nonresidents.
- 2538. Acknowledgment or incurrance of indebtedness to evade taxation.
- 2539. Valuation of corporate franchises and privileges.
- 2540. — In general.
- 2541. — Deduction of tangible property and indebtedness.
- 2542. — Deduction of property outside of state.
- 2543. — Apportionment of assessment.
- 2544. Valuation of corporate capital.
- 2545. — In general.
- 2546. — Actual, cash, or market value of stock.
- 2547. — Property forming basis of valuation in general.
- 2548. — Deduction of value of property not taxable.
- 2549. — Deduction of value of property otherwise taxed.
- 2550. — Deduction of indebtedness.
- 2551. Determination of amount of corporate earnings or receipts.
- 2552. Determination of amount of dividends.
- 2553. Valuation of shares of stock.
- 2554. Valuation of corporate securities.
- 2555. Financial institutions.
- 2556. — In general.
- 2557. — Valuation of shares.
- 2558. Insurance companies, policies, surplus, and other funds.
- 2559. Express and other transportation companies.

**III. PROPERTY TAXES.(Cont'd)**

- 2560. Railroads.
- 2561. Telecommunication companies.
- 2562. Foreign corporations.
- 2563. Shares in foreign corporations.
- 2564. Increase of valuation in report or statement of corporation.
- 2565. Increase of valuation on failure to make report or statement.
- 2566. Deduction of indebtedness of holders of stock or securities.
- 2567. Amendment or alteration by assessors in general.
- 2568. Addition by assessors of persons or property omitted.
- 2569. Additional or supplemental assessment and original assessment of property omitted.
- 2570. Actions and other judicial proceedings to compel assessment or payment of tax on omitted property.
- 2571. Reassessment.
- 2572. Notice of assessment.
- 2573. Corporate stock, property, or receipts.
  - (1). In general.
  - (2). Addition of property or other subject-matter omitted.
  - (3). Additional or supplemental assessment, and original assessment of property omitted.
  - (4). Notice of assessment.

**6. ASSESSMENT ROLLS OR BOOKS.**

- 2575. In general.
- 2576. Nature and necessity.
- 2577. Authority and duty to make.
- 2578. Making and requisites in general.
- 2579. Form and arrangement.
- 2580. Designation of persons.
- 2581. — In general.
- 2582. — Owner or occupant of property.
- 2583. — Estate, heirs, or representatives of decedent.
- 2584. — Owners or others unknown.
- 2585. Designation of corporations or holders of corporate stock or securities.
- 2586. Description of property.
- 2587. — In general.
- 2588. — Real property.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2589. — Separate listing of unoccupied or unseated lands and lands of nonresidents.
- 2590. — Personal property in general.
- 2591. — Credits and securities.
- 2592. — Corporate property, stock, and securities.
- 2593. Extending amount of tax.
- 2594. — In general.
- 2595. — Statement of amounts of separate taxes and total tax.
- 2596. Certification or other authentication in general.
- 2597. Signatures.
- 2598. Affidavit or other verification.
- 2599. Return.
- 2600. Filing or record.
- 2601. Making and requisites of duplicate rolls or lists.
- 2602. Omissions.
- 2603. Amendment or alteration.
- 2604. Curative statutes.
- 2605. Effect of invalidity.
- 2606. Partial invalidity.
- 2607. Presumptions as to validity.
- 2608. Custody, care, and use of records.
- 2609. Access to rolls or books.
- 2610. Construction and operation in general.
- 2611. Conclusiveness and effect.

**7. EQUALIZATION OF ASSESSMENTS.**

- 2620. In general.
- 2621. State boards of equalization and state tax commissions.
- 2622. Nature and necessity.
- 2623. Constitutional and statutory provisions.
- 2624. Equalization among taxing or assessment districts by county or other local board or officer.
- 2625. — In general.
- 2626. — Method of equalizing assessments.
- 2627. — Record of proceedings, decision, and certification.
- 2628. — Proceedings to compel equalization.
- 2629. — Review of proceedings.

**III. PROPERTY TAXES.(Cont'd)**

- 2630. Equalization among counties or other municipalities by state board or officer.
- 2631. — In general.
- 2632. — Method of equalizing assessments.
- 2633. — Construction, operation, and conclusiveness of decisions.
- 2634. — Review of proceedings.

**8. REVIEW, CORRECTION, OR SETTING ASIDE OF ASSESSMENT IN GENERAL.**

- 2640. Nature and scope of remedies in general.
- 2641. Constitutional and statutory provisions.
- 2642. Exclusiveness of statutory remedy.
- 2643. Assessments reviewable.
- 2644. Grounds of review.
- 2645. — In general.
- 2646. — Defects or irregularities in proceedings.
- 2647. — Error as to valuation or amount.
- 2648. Right of review.
- 2649. — In general.
- 2650. — Persons entitled.
- 2651. — Effect of failure to make list or statement of property.
- 2652. — Estoppel or waiver.
- 2653. Creation and organization of board of review or other special tribunal.
- 2654. Authority and powers of board or officer.
- 2655. — In general.
- 2656. — Assessment of persons, property, or other matters omitted.
- 2657. — Change of valuation or amount of tax in general.
- 2658. — Increase of valuation or tax.
- 2659. — Reduction of valuation or abatement of tax.
- 2660. — Remission of tax.
- 2661. — Amendment or correction of defects in proceedings.
- 2662. — Setting aside assessment.
- 2663. — Reassessment.
- 2664. Place and time of meeting of board.
- 2665. Notice to public of meeting or sessions of board.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2666. Time for application to board or officer.
- 2667. Mode and course of procedure in general.
- 2668. Notice to persons interested.
- 2669. — In general.
- 2670. — Necessity.
- 2671. — Requisites and sufficiency.
- 2672. — Persons notified.
- 2673. — Waiver of notice or objections thereto.
- 2674. Complaint or petition of persons aggrieved.
- 2675. Answer or other mode of objection.
- 2676. Hearing.
- 2677. Scope and extent of relief.
- 2678. Rendition, form, and requisites of decision.
- 2679. Record of proceedings.
- 2680. Conclusiveness and effect of decision.
- 2681. Making and mode of correction of assessment.
- 2682. Setting aside assessment and making of reassessment.

**9. ARBITRATION OR ALTERNATIVE DISPUTE RESOLUTION.**

- 2685. In general.

**10. JUDICIAL REVIEW OR INTERVENTION.**

- 2690. In general.
- 2691. Review of board by courts.
- 2692. — In general.
- 2693. — Jurisdiction.
- 2694. — Time of taking proceedings.
- 2695. — Decisions reviewable and right of review.
- 2696. — Presentation and reservation before board or officer of grounds of review.
- 2697. — Conditions precedent in general; payment of tax and filing of bond.
- 2698. — Exhaustion of remedies.
- 2699. — Proceedings for review and parties.
  - (1). In general.
  - (2). Process and notice.
  - (3). Parties.
  - (4). Pleading.

**III. PROPERTY TAXES.(Cont'd)**

- (5). Trial de novo.
- (6). Scope and extent of review.
- (7). — In general.
- (8). — Questions of fact.
- (9). — Questions of law.
- (10). — Mode of review.
- (11). Determination and relief.
- 2700. Further judicial review.
- 2701. — In general.
- 2702. — Decisions reviewable and right of review.
- 2703. — Presentation and reservation before reviewing court.
- 2704. — Scope of review.
- 2705. — De novo review.
- 2706. — Determination and relief.
- 2707. Other judicial remedies.
- 2708. — In general.
- 2709. — Jurisdiction and powers of courts in general.
  - (1). In general.
  - (2). Change of valuation.
  - (3). Setting aside assessment and striking tax from roll.
  - (4). Assessment of omitted property.
  - (5). Mode of correction.
- 2710. Certiorari to review assessment.
- 2711. Mandamus to correct assessment.
- 2712. Injunction to restrain assessment.
- 2713. Actions to reduce assessment or abate tax.
- 2714. Actions to set aside assessment or for reassessment.

**11. EVIDENCE IN GENERAL.**

- 2720. In general.
- 2721. Admissibility.
- 2722. Presumptions.
- 2723. Burden of proof.
- 2724. Weight and sufficiency of evidence.
- 2725. — In general.
- 2726. — Classification of property.
- 2727. — Persons and property subject to taxation.
- 2728. — Valuation.
- 2729. — Inequality or discrimination.

**371. TAXATION****(I) LIEN AND PRIORITY.**

- 2730. In general.
- 2731. Statutory provisions.
- 2732. Creation and requisites of lien.
- 2733. — In general.
- 2734. — Validity and sufficiency of assessment.
- 2735. — Entry of unpaid tax and tax books or other records.
- 2736. Property to which lien attaches.
- 2737. Time when lien attaches.
- 2738. Priorities in general.
- 2739. Priority as to pre-existing liens or encumbrances.
- 2740. Transfer of property in general.
- 2741. Judicial sale of property.
- 2742. Duration and termination of lien in general.
- 2743. Loss or discharge of lien.
- 2744. Protection of lien.

**(J) PAYMENT AND REFUNDING OR RECOVERY OF TAX PAID.**

- 2750. In general.
- 2751. Notice, demand, and opportunity for payment as conditions precedent.
- 2752. Persons by whom payment may be made.
- 2753. Payment of proportionate share of tax assessed on land in gross.
- 2754. Duty of corporation as to payment of tax on stock, indebtedness, or securities.
- 2755. — In general.
- 2756. — Bank shares, dividends, and deposits.
- 2757. Payment from fund in court or property in custody of the law.
- 2758. Officers to whom payment may be made.
- 2759. Place for payment.
- 2760. Time for payment.
- 2761. Mode of making and medium of payment.
- 2762. Amount of payment.
- 2763. Interest and fees.
- 2764. Receipts and certificates.
- 2765. Evidence of payment.
- 2766. Operation and effect of payment in general.

**III. PROPERTY TAXES.(Cont'd)**

- 2767. Rights, as against persons or property liable, of other persons making payment.
- 2768. — In general.
- 2769. — Right to lien.
- 2770. Effect of failure to pay.
- 2771. — In general.
- 2772. — Excuses for nonpayment.
- 2773. Refunding taxes paid.
- 2774. Redemption of stamps.
- 2775. Right of recovery of taxes paid.
- 2776. — In general.
- 2777. — Voluntary payment in general.
- 2778. — Mistake of law.
- 2779. — Mistake of fact.
- 2780. — Duress or compulsion.
- 2781. — Protest.
- 2782. Actions and proceedings for recovery of taxes paid.
- 2783. — In general.
- 2784. — Nature and form of remedy.
- 2785. — Conditions precedent.
- 2786. — Time to sue and limitations.
- 2787. — Persons entitled to sue and persons liable.
- 2788. — Parties.
- 2789. — Pleading.
- 2790. — Evidence.
- 2791. — Trial, relief awarded, and amount of recovery.
- 2792. — Appeal.

**(K) COLLECTION AND ENFORCEMENT AGAINST PERSONS OR PERSONAL PROPERTY.****1. IN GENERAL.**

- 2800. In general.
- 2801. Nature of power to enforce collection.
- 2802. Statutory provisions.
- 2803. Appointment, qualification, and tenure of collectors.
- 2804. Authorization and qualification of other officers as collectors.
- 2805. Deputies and assistants of collectors.
- 2806. Compensation of collectors and other officers.
- 2807. Authority to collect in general.
- 2808. Authority to collect arrears.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2809. Authority to collect interest, penalties, and fees.
- 2810. Authority to compromise or remit.
- 2811. Delivery of assessment roll or tax list or duplicate.
- 2812. Warrant for collection.
- 2813. Tax bills.
- 2814. Receipt, custody, and care of taxes collected.
- 2815. Accounting as to and payment over of taxes collected.
- 2816. — In general.
- 2817. — Conclusiveness of settlement.
- 2818. Return of list or warrant.
- 2819. — In general.
- 2820. — Delinquent list.
- 2821. Rights and liabilities as to taxes uncollected.
- 2822. Liabilities for official acts in general.
- 2823. Warrant or other authority as protection from liability.
- 2824. Liabilities for negligence or misconduct in general.
- 2825. Failure to pay over taxes collected.
- 2826. Summary remedies against defaulting officers.
- 2827. Actions against defaulting officers.
- 2828. Liabilities on official bonds.
- 2829. Summary remedies on official bonds.
- 2830. Actions on official bonds.
- 2831. Criminal responsibility.

**2. SUMMARY REMEDIES AND ACTIONS.**

- 2835. In general.
- 2836. Statutory provisions.
- 2837. Personal liability for taxes assessed on specific property.
- 2838. Summary remedies against personal property in general.
- 2839. Taxes for which property may be seized and sold.
- 2840. Property subject to seizure and sale.
- 2841. Issuance and requisites of tax execution or other process against property.
- 2842. Levy of warrant, execution or other process.
- 2843. Release or delivery of property on giving security.

**III. PROPERTY TAXES.(Cont'd)**

- 2844. Claims by third persons to property seized.
- 2845. Assignment of tax execution.
- 2846. Distress and proceedings thereon.
- 2847. Sale of personal property.
- 2848. Actions for unpaid taxes.
- 2849. — In general.
- 2850. — Nature and form.
- 2851. — Rights of action.
- 2852. — Conditions precedent.
- 2853. — Defenses.
- 2854. — Jurisdiction and venue.
- 2855. — Time to sue and limitations.
- 2856. — Parties.
- 2857. — Process and appearance.
- 2858. — Pleading.
- 2859. — Evidence.
- 2860. — Trial.
- 2861. — Judgment and relief.
- 2862. — Appeal and error.
- 2863. — Costs and fees.
- 2864. Actions to enforce lien on personal property.
- 2865. Proceedings supplementary to process against property.
- 2866. Rule or order to show cause why tax should not be paid.
- 2867. Attachment or other process against the person.
- 2868. Criminal prosecutions.

**3. REMEDIES FOR WRONGFUL ENFORCEMENT.**

- 2871. Nature and scope of remedies in general.
- 2872. Statutory provisions.
- 2873. Injunction.
- 2874. — In general.
- 2875. — Grounds of relief in general.
- 2876. — Illegal tax.
- 2877. — Invalid levy.
- 2878. — Defects in assessment.
  - (1). In general.
  - (2). Excessive or unequal assessment or valuation.
  - (3). Assessment of persons or property not liable.
  - (4). Defects or errors in proceedings for collection.



**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2879. — Special grounds of equity jurisdiction.
- (1). In general.
- (2). Adequacy of remedy at law in general.
- (3). Remedy in proceedings for assessment.
- (4). Avoidance of multiplicity of suits.
- (5). Prevention of cloud on title.
- 2880. — Conditions precedent in general.
- 2881. — Payment or tender of taxes not in controversy.
- 2882. — Proceedings and relief.
- 2883. — Preliminary injunction.
- 2884. Recovery of possession of property seized or sold.
- 2885. Actions for damages.

**(L) SALE OF LAND FOR NONPAYMENT OF TAX.**

- 2900. In general.
- 2901. Constitutional and statutory provisions.
- 2902. Taxes and charges for which land may be sold.
- 2903. — In general.
- 2904. — Validity of tax.
- 2905. — Regularity of levy and assessment.
- 2906. — Different taxes and taxes for different years.
- 2907. — Interest, penalties, and fees.
- 2908. — Partial illegality.
- 2909. Demand of payment and default of owner.
- 2910. Exhaustion of personalty before recourse to realty.
- 2911. List of lands delinquent.
- 2912. — In general.
- 2913. — Necessity.
- 2914. — Making and requisites.
- 2915. — Verification and certification.
- 2916. — Filing.
- 2917. — Publication.
- 2918. Real property subject to sale.
- 2919. Sale of lands of persons under disabilities, nonresident, or unknown.
- 2920. Enforcement against real property of personal judgment.
- 2921. Enforcement of lien on real property.

**III. PROPERTY TAXES.(Cont'd)**

- 2922. Proceedings for judgment against real property.
- 2923. — In general.
- 2924. — Nature and form.
- 2925. — Grounds and conditions precedent.
- 2926. — Defenses.
- 2927. — Jurisdiction and venue.
- 2928. — Time to sue and limitations.
- 2929. — Parties.
- 2930. — Process or notice and appearance.
- 2931. — Pleading.
- 2932. — Evidence.
- 2933. — Trial or hearing.
- 2934. — Decision.
- 2935. — Form and requisites, and vacation or amendment of judgment or decree.
- 2936. — Conclusiveness of adjudication, and collateral attack.
- 2937. — Review.
- 2938. — Costs and fees.
- 2939. Warrant, execution, or other process against real property.
- 2940. Restraining sale.
- 2941. Officers authorized to sell.
- 2942. Mode of sale.
- 2943. Place of sale.
- 2944. Time of sale.
- 2945. Notice of sale.
- 2946. — In general.
- 2947. — Necessity.
- 2948. — Persons to be notified, and form, requisites, and validity of notice.
- 2949. — Designation or description of property.
- 2950. — Personal notice to owner or occupant.
- 2951. — Publication.
- 2952. — Posting.
- 2953. — Proof.
- 2954. Postponement or adjournment.
- 2955. Amount for which land may be sold.
- 2956. — In general.
- 2957. — Part of total amount delinquent.
- 2958. — Sale for excessive amount.
- 2959. — Sale for amount including unauthorized charges and fees.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 2960. Estate or interest which may be sold.
- 2961. Quantity of land which may be sold.
- 2962. Sale in parcels.
- 2963. Conduct of sale in general.
- 2964. Terms and conditions of sale.
- 2965. Persons who may purchase.
- 2966. Amount required to purchase.
- 2967. Bids or applications to purchase.
- 2968. Combinations among or fraud of bidders.
- 2969. Private sale of lands unsold at public sale.
- 2970. Purchase by state or municipality, and resale.
- 2971. — In general.
- 2972. — Proceedings for purchase.
- 2973. — Operation and effect of purchase.
- 2974. — Waiver or abandonment of purchase.
- 2975. — Resale.
  - (1). In general.
  - (2). Application to purchase and proceedings thereon.
  - (3). Terms and conditions of sale and amount required to purchase.
- 2976. Payment of price.
- 2977. Disposition of proceeds.
- 2978. — In general.
- 2979. — Surplus.
- 2980. Report or return and record of sale.
- 2981. — In general.
- 2982. — Making and requisites.
- 2983. — Affidavit of disinterestedness.
- 2984. — Operation and effect, and amendment.
- 2985. Confirmation by court.
- 2986. Certificate of sale.
- 2987. Certificate of delinquency issued to person paying taxes.
- 2988. Curative statutes.
- 2989. Setting aside sale or certificate.
- 2990. — In general.
- 2991. — Grounds, conditions precedent, and time for proceedings.
- 2992. — Proceedings, relief granted, and review.
- 2993. — Resale.
- 2994. Fees and expenses of sale.

**III. PROPERTY TAXES.(Cont'd)**

- 2995. Collateral attack on sale.
- 2996. Presumptions as to validity.
- 2997. Wrongful sale.

**(M) REDEMPTION FROM TAX SALE.**

- 3000. In general.
- 3001. Right to redeem and necessity of redemption in general.
- 3002. Constitutional and statutory provisions.
- 3003. Persons entitled to redeem.
- 3004. — In general.
- 3005. — Redemption of homestead.
- 3006. — Minors and others under disability.
- 3007. — Owners in general.
- 3008. — Mortgagees.
- 3009. — Purchasers.
- 3010. Waiver, estoppel, and laches.
- 3011. Time for redemption.
- 3012. Notice to redeem.
- 3013. — In general.
- 3014. — Nature and necessity.
- 3015. — Persons who may give notice.
- 3016. — Persons entitled to notice.
- 3017. — Form and requisites.
- 3018. — Service in general.
- 3019. — Publication.
- 3020. — Proof.
- 3021. Actions to foreclose right of redemption.
- 3022. — In general.
- 3023. — Time to sue and limitations.
- 3024. — Parties.
- 3025. — Process or notice.
- 3026. — Pleading and evidence.
- 3027. — Judgment or decree, and review.
- 3028. — Costs and fees.
- 3029. Amount required to redeem.
- 3030. — In general.
- 3031. — Interest and penalties.
- 3032. — Subsequent taxes.
- 3033. Payment or tender.
- 3034. Proceedings on redemption.
- 3035. Report or list of redemptions.
- 3036. Certificate of redemption.
- 3037. Defects, objections, and waiver.
- 3038. Failure to redeem.
- 3039. — In general.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 3040. — Excuses for delay or defects.
- 3041. — Mistake or fault of officer.
- 3042. — Fraud of purchaser.
- 3043. — Refusal to allow redemption.
- 3044. Redemption by agreement or act of parties.
- 3045. Actions to redeem in general.
- 3046. — In general.
- 3047. — Nature and rights of action.
- 3048. — Jurisdiction, limitations, and parties.
- 3049. — Pleading and evidence.
- 3050. — Judgment and review.
- 3051. Statutory actions to redeem after execution of tax deed.
- 3052. Disposition of redemption money.
- 3053. Operation and effect.

**(N) TAX TITLES.****1. TITLE AND RIGHTS OF PURCHASER AT TAX SALE.**

- 3060. In general.
- 3061. Nature and effect of sale as transfer in general.
- 3062. Statutory provisions.
- 3063. Property and rights passing by sale.
- 3064. Estate or interest acquired by purchaser or holder of certificate of sale.
- 3065. — In general.
- 3066. — Purchase from state.
- 3067. Liens and encumbrances on property in general.
- 3068. Other taxes on property.
- 3069. Effect of defects or irregularities in levy or assessment, judgment, decree, or sale.
- 3070. — In general.
- 3071. — Assessment.
  - (1). In general.
  - (2). Ownership of property.
  - (3). Description of property.
  - (4). Property not taxable.
- 3072. — Proceedings for enforcement.
  - (1). In general.
  - (2). Proceedings preliminary to sale in general.
  - (3). Judgment or foreclosure of lien.
  - (4). Notice of sale.

**III. PROPERTY TAXES.(Cont'd)**

- (5). Conduct and return of sale.
- 3073. — Amendment of records or proceedings.
- 3074. — Bona fide purchasers.
- 3075. Possession by purchaser.
- 3076. Loss of title by failure to take or retain possession, or by adverse possession.
- 3077. Trees and timber.
- 3078. Rents and profits and waste.
- 3079. Lien for purchase money in general.
- 3080. Liabilities of purchasers.
- 3081. Assignees of certificates of sale.
- 3082. Grantees of purchasers.

**2. TAX DEEDS.**

- 3085. In general.
- 3086. Necessity and nature in general.
- 3087. Statutory provisions.
- 3088. Authority and duty to make.
- 3089. Right to deed.
- 3090. Conditions and prerequisites.
- 3091. Time of issuance or of making application for deed.
- 3092. Notice of application for deed.
- 3093. Application for deed, and proceedings thereon.
- 3094. Restraining making or delivery.
- 3095. Mandamus or other proceeding to compel making or delivery.
- 3096. Form and contents in general.
- 3097. Parties.
- 3098. Recitals.
- 3099. — In general.
- 3100. — Levy and assessment of tax.
- 3101. — Delinquency.
- 3102. — Proceedings preliminary to sale.
- 3103. — Sale.
- 3104. — Consideration, and proceedings subsequent to sale.
- 3105. Property which may be included.
- 3106. Description of property.
- 3107. — In general; necessity and sufficiency.
- 3108. — Certainty.
- 3109. — Variance between deed and prior tax proceedings.
- 3110. Execution.
- 3111. Acknowledgment.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 3112. Delivery.
- 3113. Recording and registration.
- 3114. Amendment or reformation.
- 3115. Curative statutes.
- 3116. Cancellation by public officers.
- 3117. Construction.
- 3118. Property conveyed.
- 3119. Estate or interest created.
- 3120. — In general.
- 3121. — Fee simple.
- 3122. — Term of years.
- 3123. — Transfer of interest of person assessed.
- 3124. — Deed from state.
- 3125. Effect as to interests not assessed or sold.
- 3126. Effect as to liens and encumbrances on property in general.
- 3127. Effect as to other taxes on property.
- 3128. Priorities of successive tax deeds.
- 3129. Effect as evidence in general.
- 3130. — In general.
- 3131. — Validity and construction of statutory provisions in general.
- 3132. — Presumptions and burden of proof as to prerequisites.
- 3133. Effect as to title.
- 3134. — In general.
- 3135. — Validity and construction of statutory provisions in general.
- 3136. — Evidence of title dependent on preliminary or supplementary proof.
- 3137. — Presumptions and rebuttal thereof.

**3. ACTIONS TO CONFIRM OR TRY TITLE.**

- 3140. In general.
- 3141. Nature and form of remedies in general.
- 3142. Statutory provisions.
- 3143. Right of action by claimant under tax title for possession of property.
- 3144. Right of action to confirm or quiet tax title.
- 3145. Defenses against claimant under tax title.
- 3146. Payment or deposit of amount of taxes or purchase money as condition precedent to defense against tax title.

**III. PROPERTY TAXES.(Cont'd)**

- 3147. Right to attack tax title in general.
- 3148. — In general.
- 3149. — Estoppel and ratification.
- 3150. — Title necessary to contest tax title.
- 3151. — Mortgagee.
- 3152. Right of action against claimant under tax title for possession of property.
- 3153. Right of action to set aside tax sale, certificate, or deed.
- 3154. Right of action to remove cloud on title by tax sale or deed.
- 3155. Tender or deposit of amount of taxes or purchase money as condition precedent to attack on tax title.
- 3156. — In general.
- 3157. — Necessity of payment into court and sufficiency of tender.
- 3158. Jurisdiction and venue.
- 3159. Time to sue, limitations, and laches.
- 3160. — In general.
- 3161. — Actions by claimant under tax title.
- 3162. — Actions against claimant under tax title.
  - (1). In general.
  - (2). Sufficiency of deed or title to set statute in operation, and defects cured by limitation.
  - (3). Defects in assessment, levy, and sale, and effect of redemption or payment of tax.
  - (4). Record of deed and possession of land.
- 3163. Parties.
- 3164. Joinder or intervention of claimants in actions by others.
- 3165. Process and appearance.
- 3166. Pleading.
- 3167. — In general.
- 3168. — Complaint, petition, or bill.
- 3169. — Answer and reply.
- 3170. — Amendments and supplemental pleadings.
- 3171. — Issues, proof, and variance.
- 3172. Evidence.
- 3173. — In general.
- 3174. — Presumptions and burden of proof.
- 3175. — Admissibility.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 3176. — Weight and sufficiency.
- 3177. Trial or hearing.
- 3178. Scope and extent of relief.
- 3179. — In general.
- 3180. — Payment of taxes or reimbursement of purchase money.
  - (1). In general.
  - (2). Defect or irregularity avoiding sale.
  - (3). Amount to be paid.
  - (4). Lien.
- 3181. — Compensation for improvements.
- 3182. Judgment or decree and enforcement thereof.
- 3183. Appeal.
- 3184. Costs.

**4. RIGHTS AND REMEDIES OF PURCHASER OF INVALID TITLE.**

- 3190. In general.
- 3191. Nature of right to relief.
- 3192. Statutory provisions.
- 3193. Refunding or recovery of purchase money from state, county, or other municipality.
- 3194. — In general; authority and duty to reimburse.
- 3195. — Grounds and extent of liability.
- 3196. — Persons entitled to reimbursement.
- 3197. — Actions and proceedings to enforce claims.
- 3198. — Operation and effect of refunding.
- 3199. Lien for taxes or purchase money.
- 3200. Reimbursement by owner.
- 3201. — In general.
- 3202. — Taxes delinquent, interest, penalties, and costs.
- 3203. — Purchase money or amount required to redeem.
- 3204. — Taxes paid subsequent to sale.
- 3205. — Actions.
- 3206. Compensation for improvements.

**(O) FORFEITURES AND PENALTIES.**

- 3210. In general.
- 3211. Nature and power to impose.
- 3212. Statutory provisions.

**III. PROPERTY TAXES.(Cont'd)**

- 3213. Grounds in general.
- 3214. Penalties for failure to make list, report, or statement.
- 3215. Penalties for making false list, report, or statement.
- 3216. Penalties for nonpayment of tax in general.
- 3217. Penalties imposed in actions for unpaid taxes.
- 3218. Interest on penalties.
- 3219. Persons liable for penalties.
- 3220. Remission of penalties.
- 3221. Proceedings for penalties.
- 3222. Forfeiture of land delinquent.
- 3223. — In general.
- 3224. — Failure to list or report land.
- 3225. — Nonpayment of tax.
- 3226. — Failure of bidders at tax sale.
- 3227. — Proceedings for enforcement.
- 3228. — Operation and effect.
- 3229. — Redemption.
- 3230. — Remission or waiver.
- 3231. — Sale or other disposition of lands forfeited.
- 3232. Crimes and prosecutions.

**(P) DISPOSITION OF TAXES COLLECTED, AND FAILURE OF LOCAL AUTHORITIES TO COLLECT.**

- 3235. In general.
- 3236. Duty of local authorities to collect or account in general.
- 3237. Statutory provisions.
- 3238. Taxes collected by state.
- 3239. General taxes collected by county, city, or other municipality.
- 3240. — In general.
- 3241. — Rights of state.
- 3242. — Rights as between county and city or other taxing or collection district.
  - (1). In general.
  - (2). Application to bonded debt.
  - (3). Interest.
  - (4). Actions to recover taxes collected.
- 3243. Interest, penalties, and costs collected.
- 3244. Liabilities of county, city, or other collection district for taxes uncollected.

**371. TAXATION****III. PROPERTY TAXES.(Cont'd)**

- 3245. Proceedings for apportionment, accounting, and settlement.
- 3246. Payment and application thereof.

**IV. EXCISE TAXES IN GENERAL**

- 3249. In general.
- 3250. Constitutional and statutory provisions.
- 3251. What is an "excise tax"; other taxes and fees distinguished.
- 3252. Merchandise or commodities subject to excise tax.
- 3253. Assessment.
- 3254. Lien and priority.
- 3255. Payment.
- 3256. Refunding or recovery of tax paid.
- 3257. Collection and enforcement.
- 3258. Penalties, forfeitures, crimes, and offenses.
- 3259. Disposition.

**V. EMPLOYMENT TAXES AND WITHHOLDING IN GENERAL**

- 3260. In general.
- 3261. Statutory provisions.
- 3262. — In general.
- 3263. — Validity.
- 3264. State and federal issues in general.
- 3265. Approval and certification of state laws by federal authorities.
- 3266. Reciprocal arrangements with other state or federal authorities.
- 3267. Construction.
- 3268. Nature of contributions exacted.
- 3269. Employments subject to tax in general.
- 3270. Tests of employment.
- 3271. — In general.
- 3272. — Performance of services for wages, hire, remuneration, etc.
- 3273. Persons and employing units liable in general.
- 3274. — In general.
- 3275. — Employing units or businesses controlled by same interests.
- 3276. Employers, who are.
- 3277. — In general.
- 3278. — Successors.
- 3279. Election and termination of coverage.
- 3280. Employees, who are.
- 3281. — In general.

**V. EMPLOYMENT TAXES AND WITHHOLDING IN GENERAL.(Cont'd)**

- 3282. — Employees of employees.
- 3283. — Employees of subcontractors hired to do ordinary work of employing units.
- 3284. — Employees of independent contractors.
- 3285. Independent contractors.
- 3286. Employments not taxable in general.
- 3287. — In general.
- 3288. — Agricultural.
- 3289. — Charitable, educational, literary, or scientific.
- 3290. — On vessels.
- 3291. Assessment.
  - (1). In general.
  - (2). Rate.
  - (3). Matters considered.
  - (4). Time.
  - (5). Evidence.
  - (6). — In general.
  - (7). — Presumptions and burden of proof.
  - (8). — Weight and sufficiency.
  - (9). Proceedings.
- 3292. Lien and priority.
- 3293. Payment.
- 3294. Refunding or recovery of tax paid.
- 3295. Collection and enforcement.
- 3296. Penalties, forfeitures, crimes, and offenses.
- 3297. Disposition.

**VI. LEGACY, INHERITANCE AND TRANSFER TAXES.**

- 3300. In general.
- 3301. Nature and power to impose.
- 3302. — In general.
- 3303. — Indians and their property.
- 3304. Statutory provisions.
- 3305. — In general.
- 3306. — Purpose.
- 3307. — Constitutionality.
  - (1). In general.
  - (2). Equality and uniformity in general.
  - (3). Exemption or classification based on amount or value of estate or property.

**371. TAXATION****VI. LEGACY, INHERITANCE AND  
TRANSFER TAXES.(Cont'd)**

- (4). Exemptions or classifications based on relationship of parties.
- (5). Exemption of bequests for charitable or religious purposes.
- (6). Limitation of tax to personal property.
- (7). Retroactive provisions.
- (8). Tax on transfers of corporate stock.
- 3308. — Construction and operation in general.
- 3309. — Retroactive operation.
- 3310. — Amendment and repeal.
- 3311. What law governs.
- 3312. Preemption.
- 3313. Local ordinances.
- 3314. Administrative agencies in general.
- 3315. Rules and regulations in general.
- 3316. Property liable.
- 3317. — In general.
- 3318. — Nature of property.
- 3319. — Particular estates or interests.
- 3320. — Property of nonresidents or aliens.
- 3321. — Situs of property.
  - (1). In general.
  - (2). Effect of liability of property to tax in another state.
- 3322. — Property passing under law of state imposing tax.
- 3323. Transfers of property not subject of or exempt from general taxation.
- 3324. Exemptions.
- 3325. — In general.
- 3326. — Amount or value of estate disposed of or distributed.
- 3327. — Relationship of parties.
  - (1). In general.
  - (2). Children by adoption.
  - (3). Mutually acknowledged relation of parent and child.
- 3328. — Charitable, educational, religious, or other public corporations, institutions, or purposes.
  - (1). In general.
  - (2). Charitable corporations and institutions.

**VI. LEGACY, INHERITANCE AND  
TRANSFER TAXES.(Cont'd)**

- (3). Educational corporations and societies.
- (4). Religious corporations and societies.
- (5). Nations and lesser municipal entities.
- (6). Foreign corporations.
- 3329. — Proceedings to establish exemptions.
- 3330. Transfers subject to tax.
- 3331. — In general.
- 3332. — Mode and form in general.
  - (1). In general.
  - (2). Execution of power of appointment.
- 3333. — In contemplation of or intended to take effect at or after death.
  - (1). In general.
  - (2). Transfers of stocks and securities.
- 3334. — In discharge of debt or other obligation.
- 3335. — Transfers to evade or defeat tax.
- 3336. Estates or interests created by transfer.
- 3337. — In general.
- 3338. — Life estates.
- 3339. — Remainders and other future estates.
- 3340. — Commissions or other compensation of executors or trustees.
- 3341. Rate of taxation.
- 3342. Time when tax accrues.
- 3343. Persons liable for tax.
- 3344. — In general.
- 3345. — Executors, administrators, and trustees.
- 3346. — Provisions of will or other instrument.
- 3347. Collateral proceedings involving liability to tax.
- 3348. Authority and duty to make assessment.
- 3349. Proceedings for assessment in general.
- 3350. Appraisement or other valuation.
- 3351. — In general.
- 3352. — Appointment, power and proceedings of appraiser.
- 3353. — Time for appraisal.

**371. TAXATION****VI. LEGACY, INHERITANCE AND  
TRANSFER TAXES.(Cont'd)**

- 3354. — Valuation of stocks and securities.
- 3355. — Deductions in general.
- 3356. — Deduction of taxes and expenses of administration and litigation.
- 3357. — Operation and effect of appraisal and assessment.
- 3358. — Annuities and life estates.
- 3359. — Vested remainders and other future estates.
- 3360. — Contingent estates.
- 3361. Compromise or remission of tax.
- 3362. Review, correction, or setting aside of assessment.
- 3363. — In general.
- 3364. — Correction, amendment, or modification of assessment.
- 3365. — Setting aside of assessment.
- 3366. — Reappraisal.
- 3367. — Review of assessment.
- 3368. Interest.
- 3369. Lien and priority.
- 3370. Payment.
- 3371. Refunds of tax paid.
- 3372. Recovery of tax paid.
- 3373. Collection and enforcement.
- 3374. — In general.
- 3375. — Limitations.
- 3376. — Expenses of proceedings.
- 3377. Penalties, forfeitures, crimes, and offenses.
- 3378. Disposition.

**VII. GIFT TAXES.**

- 3380. In general.
- 3381. Nature and power to impose.
- 3382. Constitutional and statutory provisions.
- 3383. Property liable.
- 3384. Gifts or transfers taxable.
- 3385. Exemptions.
- 3386. Value of property gifts.
- 3387. Persons liable for tax.
- 3388. Assessment.
- 3389. Lien and priority.
- 3390. Payment.
- 3391. Refunding or recovery of tax paid.
- 3392. Collection and enforcement.

**VII. GIFT TAXES.(Cont'd)**

- 3393. Penalties, forfeitures, crimes and prosecutions.
- 3394. Disposition.

**VIII. INCOME TAXES.****(A) IN GENERAL.**

- 3400. In general.
- 3401. Nature of tax.
- 3402. — In general.
- 3403. — Excise or property tax.
- 3404. Power to impose.
- 3405. — In general.
- 3406. — Residence of taxpayer; corporations.
- 3407. — Sources of income outside state.
- 3408. — Income of agencies and instrumentalities of United States in general.
- 3409. — Income of national banks, or from shares thereof.
- 3410. — Income from bonds or other securities or obligations of United States.
- 3411. — Compensation of United States officers and employees.
- 3412. — Indians.

**(B) REGULATION.**

- 3420. In general.
- 3421. Constitutional provisions in general.
- 3422. Statutory provisions and ordinances.
- 3423. — In general.
- 3424. — Purpose.
- 3425. — Construction and operation in general.
- 3426. Validity of statutes and ordinances.
- 3427. — In general.
- 3428. — Equality and uniformity in general.
- 3429. — Classification and discrimination in general.
- 3430. — Subjects of taxation in general.
- 3431. — Residence and source of income.
- 3432. — Deductions and credits.
- 3433. — Exemptions.
- 3434. — Rate of tax.
- 3435. — Double taxation.
- 3436. — Taxation according to value.



**371. TAXATION****VIII. INCOME TAXES.(Cont'd)**

- 3437. — Provisions for assessment and collection.
- 3438. — Disposition of taxes collected.
- 3439. — Retroactive operation.
- 3440. Amendment and repeal of statutes and ordinances.
- 3441. Retroactive operation.
- 3442. Administrative agencies and regulations.

**(C) INCOMES TAXABLE.**

- 3445. In general.
- 3446. Nature of income in general.
- 3447. Gross income.
- 3448. Net income.
- 3449. Time of earning or receiving as affecting taxability.
- 3450. Tax period and income attributable thereto.
- 3451. Source of income in general.
- 3452. Annuities.
- 3453. Erroneously or illegally acquired income.
- 3454. Salaries, wages, or compensation.
- 3455. — In general.
- 3456. — Public officers and employees.
- 3457. Dividends received.
- 3458. — In general.
- 3459. — Source of dividend as capital or profits.
- 3460. — Liquidating dividends.
- 3461. — Stock dividends.
- 3462. Interest received.
- 3463. Rents and royalties.
- 3464. Devises or bequests and income therefrom.
- 3465. Capital and capital increase.
- 3466. Gains and profits from sales or exchanges.
- 3467. — In general.
- 3468. — Sales of stocks or securities.
- 3469. — Exchanges.
- 3470. Reorganizations.
- 3471. Refund of taxes or duties.
- 3472. Sources of income outside state.
- 3473. — In general.
- 3474. — Sales or services.
- 3475. — Securities or other intangibles.

**VIII. INCOME TAXES.(Cont'd)**

- 3476. — Nonresidents and foreign corporations.
- 3477. — Apportionment of income.

**(D) PERSONS LIABLE.**

- 3480. In general.
- 3481. Residence of taxpayer.
- 3482. — In general.
- 3483. — Residence during portion of tax period.
- 3484. Husbands or wives.
- 3485. Corporations in general.
- 3486. Foreign corporations.
- 3487. Partnerships.
- 3488. Religious, benevolent, scientific, educational, or other nonprofit corporations or associations.
- 3489. Unincorporated business.
- 3490. Municipalities.
- 3491. Estates and trusts.
- 3492. — In general.
- 3493. — Trusts in general.
- 3494. — Income accumulated or distributable currently.
- 3495. — Decedents' estates.

**(E) DEDUCTIONS, CREDITS, AND EXEMPTIONS.**

- 3500. Deductions.
- 3501. — In general.
- 3502. — Dividends.
- 3503. — Interest paid or accrued.
- 3504. — Estates and trusts.
- 3505. Expenses.
- 3506. — In general.
- 3507. — Ordinary and necessary expenses.
- 3508. — Trade or business.
- 3509. — Year or period in which deductible.
- 3510. Losses.
- 3511. — In general.
- 3512. — Trade or business and transactions for profit.
- 3513. — Sale, exchange or disposition of property.
- 3514. — Worthless debts, stocks or other property.
- 3515. — Year or period in which deductible.

**371. TAXATION****VIII. INCOME TAXES.(Cont'd)**

- 3516. Depreciation, depletion, obsolescence and exhaustion.
- 3517. Credits.
- 3518. Exemptions.
- 3519. — In general.
- 3520. — Reciprocal exemption of nonresidents.
- 3521. Other taxes paid.
- 3522. — In general.
- 3523. — Federal taxes.

**(F) RATES OF TAXATION, SURTAXES, AND ADDITIONAL TAXES.**

- 3525. In general.
- 3526. Gross income tax rates.
- 3527. Surtaxes.
- 3528. Additional taxes in general.
- 3529. Tax on dividends paid.

**(G) ASSESSMENT.**

- 3530. In general.
- 3531. Valuation of property.
- 3532. Determination of deductions and credits.
- 3533. Allocation to state of income and deductions.
- 3534. — In general.
- 3535. — Method of allocation.
- 3536. — Property or income and expenses allocable to state.
- 3537. Correction of assessment, reassessment or additional assessment.
- 3538. Accounting.
- 3539. Returns and reports.
- 3540. — In general.
- 3541. — Consolidated or separate corporate returns.
- 3542. Time for assessment and limitations.
- 3543. Evidence.
- 3544. — In general.
- 3545. — Weight and sufficiency.
- 3546. Relief against assessments.
- 3547. Administrative review.
- 3548. Judicial review.
- 3549. — In general.
- 3550. — Decisions reviewable, right of review and presentation of grounds of review.

**VIII. INCOME TAXES.(Cont'd)**

- 3551. — Scope and extent of review in general.
- 3552. — Presumptions.
- 3553. Liens.

**(H) PAYMENT.**

- 3554. In general.
- 3555. Refunding taxes paid.
- 3556. Recovery of taxes paid.
- 3557. — In general.
- 3558. — Actions.

**(I) COLLECTION AND ENFORCEMENT.**

- 3560. In general.
- 3561. Actions for taxes.
- 3562. Remedies for wrongful enforcement.
- 3563. Penalties, forfeitures, offenses and prosecutions.
- 3564. Disposition.

**IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES.****(A) IN GENERAL.**

- 3600. In general.
- 3601. Nature of taxes.
- 3602. — In general.
- 3603. — Use tax.
- 3604. — Gross receipts taxes.
- 3605. — Selective taxes in general.
- 3606. — Gasoline and motor fuel.
- 3607. Power to impose.
- 3608. — In general.
- 3609. — Territorial limitations; nonresidents.
- 3610. — Transactions involving United States, its agencies, or instrumentalities.
- 3611. — Municipalities; delegated power.
- 3612. — Indians and persons dealing with Indians on Indian lands.

**(B) REGULATIONS.**

- 3620. In general.
- 3621. Constitutional provisions.
- 3622. Statutory provisions and ordinances.
- 3623. — In general.
- 3624. — Purpose of acts and ordinances.
- 3625. Validity of acts and ordinances.

**371. TAXATION****IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES.(Cont'd)**

- 3626. — In general.
- 3627. — Equality and uniformity in general.
- 3628. — Gasoline and motor fuel.
- 3629. — Cigarettes and tobacco products.
- 3630. — Double taxation.
- 3631. — Rate and amount of tax.
- 3632. — Assessment and collection provisions.
- 3633. — Disposition of taxes collected.
- 3634. Retroactivity.
- 3635. Administrative agencies and regulation.

**(C) TRANSACTIONS TAXABLE IN GENERAL.**

- 3636. In general.
- 3637. Subjects and exemptions in general.
- 3638. — In general.
- 3639. — Use tax.
- 3640. — Gross receipts taxes.
- 3641. Place of transfer or use.
- 3642. Nature of transaction in general.
- 3643. Consideration or profit.
- 3644. Bailment, loan, lease, rental, or license of personal property.
- 3645. Sale or service transaction.
- 3646. Retail sales; sales not for resale.
- 3647. Casual or isolated sales.
- 3648. Withdrawal or use of goods held for sale.
- 3649. Goods or property involved.
- 3650. — In general.
- 3651. — Food and beverages.
- 3652. Drugs, medicine, and medical devices.
- 3653. Information technology.
- 3654. Containers, wrappings, and shipping material.
- 3655. Purpose of use or consumption as affecting taxability.
- 3656. — In general.
- 3657. — Manufacturing or processing, use or consumption in; incorporation in new product.
- 3658. Services taxable.

**(D) PERSONS SUBJECT TO OR LIABLE FOR TAX.**

- 3660. In general.
- 3661. Buyer's or seller's liability.
- 3662. Retailers.

**IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES.(Cont'd)**

- 3663. Consumers.
- 3664. Clubs, co-operatives, and nonprofit organizations.
- 3665. Public authorities or officers.
- 3666. Carriers and public utilities.
- 3667. Contractors and persons dealing with contractors.
- 3668. — In general.
- 3669. — Public contracts.
- 3670. Nonresidents and foreign corporations.
- 3671. Contracts as to payment.

**(E) RATE AND AMOUNT OF TAX.**

- 3672. In general.
- 3673. Sale price or value as tax basis.
- 3674. — In general.
- 3675. — Discounts and refunds; trade-ins.
- 3676. — Taxes paid.
- 3677. — Labor or service charges: transportation charges.

**(F) SELECTIVE TAXES.**

- 3678. In general.
- 3679. Cigarettes and tobacco products.
- 3680. Gasoline and motor fuel.
- 3681. — In general.
- 3682. — Transactions and products taxable.
- 3683. — Persons subject to or liable for tax in general.
- 3684. — Public authorities, officers, or instrumentalities.
- 3685. — Rate and amount.

**(G) LEVY AND ASSESSMENT.**

- 3686. In general.
- 3687. Correction of assessment, reassessment, or additional assessment.
- 3688. Accounting, returns, and reports.
- 3689. Time for assessment and limitations.
- 3690. Evidence.
- 3691. — In general.
- 3692. — Presumptions and burden of proof.
- 3693. — Weight and sufficiency.
- 3694. Administrative review.

**371. TAXATION****IX. SALES, USE, SERVICE, AND GROSS RECEIPTS TAXES.**(Cont'd)

3695. Judicial review and relief against assessments.

3696. Liens.

**(H) PAYMENT.**

3697. In general.

3698. Bonds or other security.

3699. Refunding taxes paid.

3700. — In general.

3701. — Gasoline or motor fuel tax.

3702. Recovery of taxes paid.

3703. — In general.

3704. — Actions.

**(I) COLLECTION AND ENFORCEMENT.**

3705. In general.

3706. Collection by sellers or others.

3707. — In general.

3708. — Rights and liabilities as to taxes uncollected.

3709. Actions for taxes.

3710. Remedies for wrongful enforcement.

3711. Penalties and forfeitures.

3712. Offenses and prosecutions.

3713. Disposition of proceeds in general.

3714. Disposition of gasoline or motor fuel taxes.

**372. TELECOMMUNICATIONS****SUBJECTS INCLUDED**

The transmission of communications or entertainment at a distance, otherwise than by mail

More particularly, telegraphs, telephones, television, radio, wireless and mobile communications, satellite broadcasting and communications, computer communications, and other special services

Companies and associations engaged in this industry and their rights and liabilities peculiar to it

Government ownership, operation and regulation of such activities

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Commerce, regulation of, see COMMERCE

Corporations, matters applicable to in general, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Defamation, liability for, see LIBEL AND SLANDER

Electricity used in telecommunications, injuries caused by, see ELECTRICITY

Eminent domain, see EMINENT DOMAIN

Gambling, offense of using telecommunications for, see GAMING

Mail, communication by, see POSTAL SERVICE

Municipalities' powers in general, see MUNICIPAL CORPORATIONS

Property rights in communications, see COPYRIGHTS AND INTELLECTUAL PROPERTY

Taxation of telecommunication facilities generally, see TAXATION

I. IN GENERAL, ¶600–649.

II. TELEGRAPHS, ¶650–724.

III. TELEPHONES, ¶725–1024.

(A) IN GENERAL, ¶725–749.

(B) COMMISSIONS AND AGENCIES, ¶750–759.

(C) TELEPHONE COMPANIES, ¶760–779.

(D) FRANCHISES OR LICENSES AND RIGHTS OF WAY, ¶780–809.

(E) CONSTRUCTION, EQUIPMENT AND MAINTENANCE, ¶810–849.

(F) TELEPHONE SERVICE, ¶850–924.

(G) RATES AND CHARGES, ¶925–999.

(H) PENALTIES, ¶1000–1009.

(I) OFFENSES AND PROSECUTIONS, ¶1010–1024.

IV. WIRELESS AND MOBILE COMMUNICATIONS, ¶1025–1074.

V. TELEVISION AND RADIO BROADCASTING, ¶1075–1199.

VI. CABLE TELEVISION, ¶1200–1274.

VII. SATELLITE BROADCASTING AND COMMUNICATIONS, ¶1275–1309.

VIII. COMPUTER COMMUNICATIONS, ¶1310–1399.

IX. SPECIAL SERVICES OR ACTIVITIES, ¶1400–1425.

**372. TELECOMMUNICATIONS****X. INTERCEPTION OR DISCLOSURE  
OF ELECTRONIC COMMUNICA-  
TIONS; ELECTRONIC SURVEIL-  
LANCE, ¶1426–1487.**

(A) IN GENERAL, ¶1426–1459.

(B) AUTHORIZATION BY COURTS  
OR PUBLIC OFFICERS,  
¶1460–1484.(C) TRACKING DEVICES,  
¶1485–1487.**I. IN GENERAL.**

- 600. In general.
- 601. Regulation in general.
- 602. Constitutional and statutory provisions.
- 603. — In general.
- 604. — Purpose.
- 605. — Validity.
- 606. — Retroactive operation.
- 607. What law governs.
- 608. Preemption; interplay of federal, state and local laws.
- 609. — In general.
- 610. — Rights of way regulation.
- 611. Common carrier or public utility status in general.
- 612. Commissions and agencies in general.
- 613. — In general.
- 614. — Powers and duties.
- 615. — Jurisdiction.
- 616. — Officers.
- 617. — Rules and regulations.
- 618. Telecommunication companies in general.
- 619. Franchises or licenses in general.
- 620. Franchise or license fees or taxes in general.
- 621. Construction, equipment and maintenance in general.
- 622. Telecommunication services in general.
- 623. Competition in general.
- 624. Rates and charges in general.
- 625. Government or public ownership or operation in general.
- 626. Evidence in administrative and judicial proceedings.
- 627. Administrative procedure in general.
- 628. — In general.
- 629. — Rulemaking.
- 630. — Investigations and reports.
- 631. — Hearing.

**I. IN GENERAL.(Cont'd)**

- 632. — Findings and orders; effect of decisions.
- 633. Judicial review or intervention in general.
- 634. — In general.
- 635. — Jurisdiction.
- 636. — Exhaustion of remedies.
- 637. — Injunction.
- 638. — Decisions reviewable.
- 639. — Presentation and reservation of grounds of review.
- 640. — Parties in general; standing.
- 641. — Time for proceedings; limitations.
- 642. — Pleading or petition.
- 643. — Record.
- 644. — Standard and scope of review.
- 645. — Determination and disposition; further review.

**II. TELEGRAPHS.**

- 650. In general.
- 651. Regulation in general.
- 652. Constitutional and statutory provisions.
- 653. What law governs.
- 654. Preemption; interplay of federal, state and local laws.
- 655. Common carrier or public utility status.
- 656. Commissions and agencies.
- 657. Telegraph companies.
- 658. — In general.
- 659. — Relations between companies in general; transfer of assets.
- 660. — Affiliation, consolidation and merger.
- 661. — Interconnection and mutual service; operating agreements.
- 662. — Leases between companies.
- 663. — Railroads operating lines or dealing with companies.
- 664. Government or public operation and ownership.
- 665. Franchises; right to construct and operate.
- 666. — In general.
- 667. — Federal franchise; use of public lands and navigable waters.
- 668. — State franchises.
- 669. — Local franchises or regulation; use of streets, roads or public places.

**372. TELECOMMUNICATIONS****II. TELEGRAPHS.(Cont'd)**

- 670. Right of way or other interest in private land; railroads.
- 671. Franchise or license fees or taxes.
- 672. Construction, equipment and maintenance.
- 673. — In general.
- 674. — Injuries or interference with highways.
- 675. — Changes and improvements; relocation and removal.
- 676. — Wrongful occupation of realty; trespass.
- 677. — Negligence in general.
- 678. — Injuries from wires and guy-wires.
- 679. — Poles and equipment thereon.
- 680. — Injuries to trespassers, children and persons working about wires.
- 681. — Injuries to land.
- 682. — Lines and equipment, injury to or interference with.
- 683. Telegraph service in general.
- 684. — In general.
- 685. — Contracts.
- 686. — Regulation, supervision and remedies.
  - (1). In general.
  - (2). Judicial review or intervention.
- 687. — Care and promptness in transmitting and delivery of messages in general.
- 688. — Forged or fraudulent messages.
- 689. — Hours and times of service; night messages.
- 690. — Illegal or improper purposes.
- 691. — Libelous and false messages.
- 692. — Offices and stations.
- 693. — Delivery of messages.
- 694. Charges and rates.
- 695. Negligent or erroneous transmittal or delivery of messages.
- 696. — In general.
- 697. — Proximate cause.
- 698. — Defenses and excuses; contributory negligence.
- 699. — Damages.
- 700. — Limitation or modification of liability.
- 701. — Companies and persons liable.
- 702. Actions.

**II. TELEGRAPHS.(Cont'd)**

- 703. — In general.
- 704. — Persons entitled to sue.
- 705. — Time to sue; limitations.
- 706. — Pleading.
- 707. — Issues, proof and variance.
- 708. — Evidence.
- 709. — Trial.
- 710. — Questions of law or fact.
- 711. — Instructions.
- 712. — Judgment.
- 713. — Costs and fees.
- 714. International messages.
- 715. Penalties.
- 716. Offenses and prosecutions.

**III. TELEPHONES.****(A) IN GENERAL.**

- 725. In general.
- 726. Regulation in general.
- 727. Constitutional and statutory provisions.
- 728. — In general.
- 729. — Purpose.
- 730. — Validity.
- 731. — Retroactive operation.
- 732. What law governs.
- 733. Preemption; interplay of federal, state and local laws.
- 734. — In general.
- 735. — Franchises or licenses and rights of way regulation.
  - 735.5. — Service in general.
  - 735.6. — Competition, agreements, and connections between companies.
  - 735.7. — Long distance service.
  - 735.8. — Rates and charges.
- 736. Common carrier or public utility status.

**(B) COMMISSIONS AND AGENCIES.**

- 750. In general.
- 751. Powers and duties.
- 752. Jurisdiction in general.
- 753. — In general.
- 754. — Interstate or intrastate.
- 755. Officers.
- 756. Rules and regulations in general.

**(C) TELEPHONE COMPANIES.**

- 760. In general.

**372. TELECOMMUNICATIONS****III. TELEPHONES.(Cont'd)**

- 761. Powers in general; corporate organization.
- 762. Finances and accounting.
- 763. Mortgages.
- 764. Loss of corporate franchise or dissolution; insolvency and reorganization.
- 765. Foreign corporations.
- 766. Cooperatives and mutual or nonprofit organizations.
- 767. — In general.
- 768. — Supervision by officers and commissions.
- 769. Relations between companies in general; transfer of assets.
- 770. Leases between companies.
- 771. Affiliation, consolidation and merger.
- 772. Government or public operation and ownership.
- 773. — In general.
- 774. — Federal emergency control.
- 775. Actions.

**(D) FRANCHISES OR LICENSES  
AND RIGHTS OF WAY.**

- 780. In general.
- 781. Right to construct and operate in general.
- 782. Federal franchise or certification.
- 783. State franchise, license or certificate; use of highways.
- 784. — In general.
- 785. — Territory to be served.
- 786. — Extended area service.
- 787. Local franchise or regulation; use of streets, roads or public places.
- 788. — In general.
- 789. — Necessity of local consent; effect of state franchise or statutory consent.
- 790. — Obtaining consent; procedure and imposition of conditions.
- 791. — Duration of grant; modification, revocation or renewal.
- 792. Private lines and lines incidental to other business.
- 793. Assignment or transfer of operation franchise or exchange.
- 794. Operation without franchise; remedies.
- 795. Right of way or other interest in private land.

**III. TELEPHONES.(Cont'd)**

- 796. — In general.
- 797. — Railroad rights of way.
- 798. Franchise or license fees or taxes.
- 799. — In general.
- 800. — Power to exact and validity in general.
- 801. — Fees as barrier to entry or competition.
- 802. — Amount and computation.
- 803. Administrative procedure.
- 804. Judicial review or intervention.

**(E) CONSTRUCTION, EQUIPMENT  
AND MAINTENANCE.**

- 810. In general.
- 811. Regulation in general.
- 812. Sale or lease of equipment.
- 813. Injuries or interference with streets and highways in general.
- 814. Changes and improvements; relocation and removal.
- 815. Underground systems.
- 816. Adjoining landowners' and third persons' rights in general.
- 817. Work of construction and maintenance; contracts and liens.
- 818. Use of facilities by municipality and others.
- 819. — In general.
- 820. — Lines and poles.
- 821. Wrongful occupation of realty; trespass.
- 822. — In general.
- 823. — Nuisance, injunction and removal of equipment.
- 824. Negligence in general.
- 825. — In general.
- 826. — Actions.
- 827. Injuries from wires and guy-wires.
- 828. — In general.
- 829. — Actions in general.
- 830. — Evidence and fact questions.
- 831. Poles and equipment thereon.
- 832. — In general.
- 833. — Actions.
- 834. Injuries to trespassers, children and persons working about wires.
- 835. Injuries to land.
- 836. — In general.
- 837. — Trees and shrubs.

**372. TELECOMMUNICATIONS****III. TELEPHONES.(Cont'd)**

- 838. — Actions.
- 839. Lines and equipment, injury to or interference with.
- 840. — In general.
- 841. — Actions.
- 842. — Remedies; injunction.

**(F) TELEPHONE SERVICE.**

- 850. In general.
- 851. Company's regulations in general; tariffs.
- 852. Discrimination in general.
- 853. Particular matters relating to service in general.
- 854. Competition, agreements and connections between companies.
- 855. — In general.
- 856. — Negotiation, validity and approval of agreements.
- 857. — Duty to connect with other lines or furnish service thereto; collocation.
- 858. — Local access and transport area; dialing parity.
- 859. — Customer premises equipment.
- 860. — Access to unbundled network elements.
- 861. — Access to rights of way, ducts, conduits and poles.
  - (1). In general.
  - (2). Pole attachments.
- 862. — Access by wireless, mobile and internet service providers.
- 863. — Long distance or interexchange connection.
- 864. — Reciprocal compensation.
  - (1). In general.
  - (2). Internet service providers.
- 865. — Resale.
- 866. — Pricing, rates and access charges.
- 867. — Rural exemption.
- 868. — Number portability.
- 869. — Universal service.
- 870. — Proceedings.
  - (1). In general.
  - (2). Arbitration.
- 871. Contracts for service in general.
- 872. — In general.
- 873. — Long distance service.

**III. TELEPHONES.(Cont'd)**

- 874. Negligence in providing service in general.
- 875. Directories and listing.
- 876. — In general.
- 877. — Right to numbers.
- 878. Directory assistance.
- 879. Emergency calls; 911.
- 880. Caller identification.
- 881. Extensions and private branch exchanges.
- 882. Suspension of service in general.
- 883. Restoration of service in general.
- 884. Illegal or improper purposes.
- 885. — In general.
- 886. — Gambling, lotteries and speculation.
  - (1). In general.
  - (2). Action of public officers; review and remedies.
- 887. — Indecent or obscene communications.
- 888. Advertising, canvassing and soliciting; telemarketing.
- 889. Customer privacy.
- 890. Public telephones or booths; resale of service.
- 891. Telephone answering and reference services.
- 892. Evidence in administrative or judicial proceedings.
- 893. Administrative procedure.
- 894. — In general.
- 895. — Notice.
- 896. — Investigations and reports.
- 897. — Hearing.
- 898. — Findings and orders.
- 899. Judicial review or intervention.
- 900. — In general.
- 901. — Jurisdiction.
  - (1). In general.
  - (2). Primary jurisdiction; administrative or judicial jurisdiction.
- 902. — Exhaustion of remedies.
- 903. — Injunction.
- 904. — Decisions reviewable.
- 905. — Presentation and reservation of grounds of review.
- 906. — Parties in general; standing.



**372. TELECOMMUNICATIONS****III. TELEPHONES.(Cont'd)**

- 907. — Time for proceedings; limitations.
- 908. — Pleading or petition.
- 909. — Record.
- 910. — Standard and scope of review.
- 911. — Determination and disposition; further review.
- 912. Civil liabilities and actions.
- 912.5. — In general.
- 913. — Damages resulting.
  - (1). In general.
  - (2). Notice of importance.
  - (3). Mental suffering; illness and death calls.
  - (4). Inadequate or excessive and exemplary damages.
- 914. — Limitation or modification of liability.
  - (1). In general.
  - (2). Directories and numbers.
- 915. — Defenses; grounds for refusal of service.
- 916. — Actions.
  - (1). In general.
  - (2). Persons entitled to sue.
  - (3). Pleading.
  - (4). Evidence.
  - (5). Trial.
  - (6). Questions of law or fact.
  - (7). Instructions.

**(G) RATES AND CHARGES.**

- 925. In general.
- 926. Regulation of rates in general.
- 927. Municipal regulation; franchises and contracts.
- 928. Filing of rates or tariffs.
- 929. — In general.
- 930. — Necessity.
- 931. — Filed rate doctrine in general.
- 932. — Effect on contracts, franchises and liabilities.
- 933. Reasonableness in general; confiscatory rates.
- 934. Discrimination.
- 935. Particular cases and problems in general.
- 936. Increases or decreases in rates in general.
- 937. Determination of rates.

**III. TELEPHONES.(Cont'd)**

- 938. — In general.
- 939. — Allocation of items to areas or types of business.
  - (1). In general.
  - (2). Interstate or intrastate.
- 940. — Expenses.
  - (1). In general.
  - (2). Salaries, wages and employee benefits.
  - (3). Taxes.
- 941. — Financing costs; capital structure and interest.
- 942. — Rate base; property and revenues included.
- 943. — Rate of return.
- 944. — Relations with other companies; affiliates.
- 945. — Valuation.
  - (1). In general.
  - (2). Depreciation and reserve therefore.
  - (3). Reproduction cost; mode of estimating.
- 946. Particular types of service.
- 947. — In general.
- 948. — Installation and removal; extensions and special equipment.
- 949. — Toll or meter charges.
- 950. — Long distance or interexchange.
- 951. — Pay phones.
- 952. — Extended area service.
- 953. Particular types of subscriber.
- 954. — In general.
- 955. — Residential or business use.
- 956. Private branch exchanges; hotels.
- 957. — In general.
- 958. — Resale of services.
- 959. — Alternative operators.
- 960. Evidence as to rates.
- 961. — In general.
- 962. — Presumptions and burden of proof.
- 963. — Admissibility.
- 964. — Weight and sufficiency in general.
- 965. — Valuation and depreciation.
- 966. Administrative procedure.
- 967. — In general.
- 968. — Powers of commissions and agencies.

**372. TELECOMMUNICATIONS****III. TELEPHONES.(Cont'd)**

- 969. — Investigations, reports and discovery.
- 970. — Scope of inquiry.
- 971. — Notice and hearing.
- 972. — Rehearing.
- 973. — Findings and determination; modification and revocation.
- 974. Judicial review or intervention.
- 975. — In general.
- 976. — Jurisdiction.
  - (1). In general.
  - (2). Primary jurisdiction; administrative or judicial jurisdiction.
- 977. — Decisions and orders reviewable.
- 978. — Presentation and reservation of grounds of review.
- 979. — Persons entitled and parties.
- 980. — Time for proceedings; limitations.
- 981. — Exhaustion of remedies.
- 982. — Equitable relief; injunction.
- 983. — Temporary injunction and stay order.
- 984. — Pleading or petition.
- 985. — Record.
- 986. — Standard and scope of review; powers of court.
- 987. — Review of valuation and fact questions.
- 988. — Findings and determination; modification or vacation and further review.
- 989. Temporary, emergency or test rates; procedure.
- 990. Intercompany rates; division of tolls.
- 991. Liability for charges; payment and collection.
- 992. — In general.
- 993. — Refunds in connection with rate-making.
- 994. — Refusal of service for nonpayment.
- 995. — Directories.
- 996. — Unauthorized long distance calls.
- 997. — Actions and remedies.
  - (1). In general.
  - (2). Injunction.
  - (3). Recovery of overcharge.

**(H) PENALTIES.**

- 1000. In general.

**III. TELEPHONES.(Cont'd)**

- 1001. Tariff or rate violations.
- 1002. Violations of rules or regulations concerning competition.
- 1003. Telemarketing violations.
- 1004. Actions for penalties.
- 1005. — In general.
- 1006. — Pleading.
- 1007. — Evidence and fact questions.
- (I) OFFENSES AND PROSECUTIONS.**
- 1010. In general.
- 1011. Offenses.
- 1012. — In general.
- 1013. — Telephone harassment and threats.
- 1014. — Wire fraud.
  - (1). In general.
  - (2). Nature and elements of offense in general.
  - (3). Knowledge and intent in general.
  - (4). Knowledge that communication be part of scheme; foreseeability.
  - (5). Success or possibility of success of scheme.
  - (6). Effectiveness of communication to further fraud.
  - (7). Injury from fraud.
  - (8). Nature of scheme or device in general.
  - (9). False pretenses or representations.
  - (10). Honest services fraud.
  - (11). Persons liable.
  - (12). Civil liabilities; actions.
- 1015. Prosecutions.
- 1016. — In general.
- 1017. — Indictment and information.
- 1018. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Admissibility.
  - (4). Weight and sufficiency.
- 1019. — Trial.
- 1020. — Questions of law or fact.
- 1021. — Instructions.
- 1022. — Sentencing and punishment.

**372. TELECOMMUNICATIONS****IV. WIRELESS AND MOBILE  
COMMUNICATIONS.**

- 1025. In general.
- 1026. Regulation in general.
- 1027. Constitutional and statutory provisions.
- 1028. — In general.
- 1029. — Purpose.
- 1030. — Validity.
- 1031. — Retroactive operation.
- 1032. What law governs.
- 1033. Preemption; interplay of federal, state and local laws.
- 1034. Common carrier or public utility status.
- 1035. Commissions and agencies.
- 1036. Licenses and authorizations.
- 1037. — In general.
- 1038. — Cellular telephones.
- 1039. — Personal communication services.
- 1040. — Specialized and commercial mobile radio.
- 1041. — Mobile satellite service.
- 1042. — Radio paging.
- 1043. License or authorization fees or taxes.
- 1044. Construction, equipment and maintenance; towers.
- 1045. — In general.
- 1046. — Local government regulation; proceedings.
- 1047. — Negligence.
- 1048. — Actions.
- 1049. Universal service.
- 1050. Competition, agreements and connections between companies.
- 1051. Contracts for service.
- 1052. Emergency calls; 911.
- 1053. Illegal or improper purposes.
- 1054. Administrative procedure.
- 1055. Judicial review or intervention.
- 1056. Civil liabilities and actions.
- 1057. — In general.
- 1058. — Damages resulting.
- 1059. — Limitation or modification of liability.
- 1060. — Defenses.
- 1061. — Actions.
- 1062. Rates and charges.
- 1063. — In general.
- 1064. — Liability for charges; payment and collection.

**IV. WIRELESS AND MOBILE  
COMMUNICATIONS.(Cont'd)**

- 1065. — Proceedings and review.
- 1066. Penalties.
- 1067. Offenses and prosecutions.

**V. TELEVISION AND RADIO BROADCASTING.**

- 1075. In general.
- 1076. Regulation in general.
- 1077. Constitutional and statutory provisions.
- 1078. — In general.
- 1079. — Purpose.
- 1080. — Validity.
- 1081. — Retroactive operation.
- 1082. What law governs.
- 1083. Preemption; interplay of federal, state and local laws.
- 1084. Common carrier or public utility status.
- 1085. Commissions and agencies.
- 1086. — In general.
- 1087. — Powers and duties in general.
- 1088. — Jurisdiction.
- 1089. — Officers.
- 1090. — Rules and regulations.
- 1091. License or permit in general.
- 1092. — In general.
- 1093. — Modification.
- 1094. — Renewal and revocation.
- 1095. Eligibility and qualifications for license.
- 1096. — In general.
- 1097. — Public interest, convenience or necessity in general.
- 1098. — Financial qualifications.
- 1099. — Character, citizenship and conduct.
  - (1). In general.
  - (2). Fraud, misstatements and concealment.
  - (3). Employment discrimination and equal opportunity.
- 1100. — Monopoly affecting license; multiple and cross ownership.
- 1101. — Newspapers and publishers; divestiture.
- 1102. — Mutually exclusive applications; factors considered.
  - (1). In general.
  - (2). Local ownership or control.
  - (3). Integration of ownership and control.

**372. TELECOMMUNICATIONS****V. TELEVISION AND RADIO  
BROADCASTING.(Cont'd)**

- (4). Diversity; minority ownership or control.
- 1103. — Particular cases and problems.
- 1104. Channels, frequencies and wavelengths.
- 1105. — In general.
- 1106. — Ultra high frequency.
- 1107. Aviation and navigation, matters relating thereto.
- 1108. Competition and interference.
- 1109. — In general.
- 1110. — Economic injury.
- 1111. — Particular cases and problems in general.
- 1112. — Allocation as to states, areas or populations served.
- 1113. — Time allocation and synchronization.
- 1114. Station and equipment; construction, removal and power increase.
- 1115. License fees or taxes.
- 1116. Transfer of station or license.
- 1117. — In general.
- 1118. — Security interest in station; rights of creditors.
- 1119. High definition television.
- 1120. Evidence in administrative or judicial proceedings.
- 1121. — In general.
- 1122. — Presumptions and burden of proof.
- 1123. — Admissibility.
- 1124. — Weight and sufficiency.
- 1125. Administrative procedure.
- 1126. — In general.
- 1127. — Investigations and reports.
- 1128. — Applications.
- 1129. — Notice and hearing.
- 1130. — Auctions, lotteries and competitive bidding.
- 1131. — Competitors' remedies; intervention and comparative hearing.
  - (1). In general.
  - (2). Incumbent challenges.
- 1132. — Findings and determination.
- 1133. — Rehearing and reconsideration.
- 1134. Judicial review or intervention.
- 1135. — In general.
- 1136. — Equitable relief; injunction.

**V. TELEVISION AND RADIO  
BROADCASTING.(Cont'd)**

- 1137. — Decisions reviewable.
- 1138. — Presentation and reservation of grounds of review.
- 1139. — Persons entitled and parties.
- 1140. — Exhaustion of administrative remedies.
- 1141. — Pleading and procedure.
- 1142. — Standard and scope of review in general.
- 1143. — Review of fact questions and expertise.
- 1144. — Determination and disposition; dismissal and further review.
- 1145. Effect of license in general.
- 1146. Government or publicly owned or funded stations in general.
- 1147. Programs.
- 1148. — In general.
- 1149. — Selection by broadcaster in general.
- 1150. — Particular subject matter.
  - (1). In general.
  - (2). Religious programs.
  - (3). Educational and children's programs.
- 1151. — Improper subject matter and censorship.
  - (1). In general.
  - (2). Indecent, obscene or violent material.
  - (3). Lotteries, gambling and speculation.
- 1152. — Licensing or transfer, programs as factor.
- 1153. — Political and controversial questions.
  - (1). In general.
  - (2). Fairness doctrine.
  - (3). Equal time rules.
  - (4). Personal attack rule.
  - (5). Government and publicly funded stations.
- 1154. — Purpose of program; advertising or noncommercial functions.
- 1155. — Remedies and procedure.
  - (1). In general.
  - (2). Injunction.
- 1156. Civil liabilities and actions.

**372. TELECOMMUNICATIONS****V. TELEVISION AND RADIO  
BROADCASTING.(Cont'd)**

- 1157. — In general.
- 1158. — Torts.
- 1159. — Contracts in general.
  - (1). In general.
  - (2). Ownership, control or transfer of station.
- 1160. — Programs and wrongful broadcasts.
- 1161. — Actions.
- 1162. Advertising contracts and rates.
- 1163. — In general.
- 1164. — Fraudulent billing.
- 1165. — Actions.
- 1166. Penalties.
- 1167. Offenses and prosecutions.
- 1168. — In general.
- 1169. — Unlicensed operators.
- 1170. — Prosecutions.
- 1171. International broadcasts.

**VI. CABLE TELEVISION.**

- 1200. In general.
- 1201. Regulation in general.
- 1202. Constitutional and statutory provisions.
- 1203. — In general.
- 1204. — Purpose.
- 1205. — Validity.
- 1206. — Retroactive operation.
- 1207. What law governs.
- 1208. Preemption; interplay of federal, state and local laws.
- 1209. Common carrier or public utility status.
- 1210. Commissions and agencies.
- 1211. Cable television companies in general.
- 1212. Government or public ownership or operation.
- 1213. Franchises and licenses; local regulation.
- 1214. — In general.
- 1215. — Franchise or license fees.
- 1216. — Renewal.
- 1217. — Termination and amendment.
- 1218. — Proceedings.
- 1219. Construction, equipment and maintenance in general.
- 1220. Rights of way to public or private property.

**VI. CABLE TELEVISION.(Cont'd)**

- 1221. — In general.
- 1222. — Use of streets, roads and public places.
- 1223. — Private property in general.
- 1224. — Apartments and multi-unit dwellings.
- 1225. — Utilization of other utility property.
  - (1). In general.
  - (2). Pole attachments.
  - (3). Rates and compensation.
- 1226. Discrimination.
- 1226.5. Contracts for service in general.
- 1227. Competition in general.
- 1228. Rates and charges.
- 1229. Program content; access rules.
- 1230. — In general.
- 1231. — Leased access.
- 1232. — Indecent, obscene or violent programs.
- 1233. Federal regulation.
- 1234. — In general.
- 1235. — Fees.
- 1236. — Competition and monopoly; multiple and cross ownership.
  - (1). In general.
  - (2). Telephone companies.
- 1237. — Disclosure, information and subscriber privacy.
- 1238. — Cable-broadcast relationships.
  - (1). In general.
  - (2). Distant signal rules.
  - (3). Retransmission.
  - (4). Must carry rules.
  - (5). Exclusivity rules.
  - (6). Non-duplication rules.
- 1239. Open video systems.
- 1240. Evidence in administrative or judicial proceedings.
- 1241. Administrative procedure.
- 1242. Judicial review or intervention.
- 1243. — In general.
- 1244. — Injunction.
- 1245. Civil liabilities and actions in general.
- 1246. — In general.
- 1247. — Torts.
- 1248. — Contracts.
  - (1). In general.

**372. TELECOMMUNICATIONS****VI. CABLE TELEVISION.(Cont'd)**

- (2). Ownership, control or transfer of company.
- 1249. — Actions.
- 1250. Civil liability for unauthorized interception or viewing.
- 1251. — In general.
- 1252. — Proceedings.
- 1253. — Damages and other relief.
- 1254. Offenses and prosecutions.
- 1255. — In general.
- 1256. — Unauthorized interception or viewing; descrambling.
- 1257. — Prosecutions.

**VII. SATELLITE BROADCASTING AND COMMUNICATIONS.**

- 1275. In general.
- 1276. Regulation in general.
- 1277. Constitutional and statutory provisions.
- 1278. What law governs.
- 1279. Preemption; interplay of federal, state and local law.
- 1280. Common carrier or public utility status.
- 1281. Satellite communication companies in general.
- 1282. Licenses and permits.
- 1283. License fees or taxes.
- 1284. Construction, equipment and maintenance in general.
- 1285. Restrictions on installation of reception equipment.
- 1286. Contracts and leases.
- 1287. Rates and charges.
- 1288. Competition in general.
- 1289. Channels; spectrum allocation.
- 1290. Access rules.
- 1291. Program content.
- 1292. Administrative procedure.
- 1293. Judicial review or intervention.
- 1294. Civil liabilities and actions in general.
- 1295. — In general.
- 1296. — Injunction.
- 1297. Civil liability for unauthorized interception or viewing.
- 1298. — In general.
- 1299. — Proceedings.
- 1300. — Damages and other relief.
- 1301. Penalties.

**VII. SATELLITE BROADCASTING AND COMMUNICATIONS.(Cont'd)**

- 1302. Offenses and prosecutions.
- 1303. — In general.
- 1304. — Unauthorized interception or viewing; descrambling.
- 1305. — Prosecutions.

**VIII. COMPUTER COMMUNICATIONS.**

- 1310. In general.
- 1311. Constitutional and statutory provisions.
- 1312. — In general.
- 1313. — Purpose.
- 1314. — Validity.
- 1315. — Retroactive operation.
- 1316. What law governs.
- 1317. Preemption; interplay of federal, state and local law.
- 1318. Common carrier or public utility status.
- 1319. Regulation in general.
- 1320. Internet service providers.
- 1321. — In general.
- 1322. — Telephone line interconnection.
- 1323. — Voice over internet protocol.
- 1324. — Cable television companies.
- 1325. — Wireless internet service.
- 1326. — Government or public operation and ownership.
- 1327. — Contracts for service.
- 1328. — Actions.
- 1329. Database availability.
- 1330. Domain names and numbers.
- 1331. — In general.
- 1332. — Registration.
- 1333. — Dispute resolution.
- 1334. — Actions.
- 1335. Privacy in general.
- 1335.5. Advertising and sales in general.
- 1336. Music and entertainment services and devices.
- 1336.5. Dating services.
- 1337. Administrative procedure.
- 1338. Judicial review or intervention.
- 1339. Civil liabilities; illegal or improper purposes.
- 1340. — In general.
- 1340.5. — Contracts.
- 1341. — Torts in general.

**372. TELECOMMUNICATIONS****VIII. COMPUTER COMMUNICATIONS.(Cont'd)**

- 1342. — Fraud; unauthorized access or transmission.
- 1343. — Unsolicited e-mail.
- 1344. — Persons and entities liable; immunity.
- 1345. — Damages and other relief.
- 1346. — Actions.
- 1347. Offenses and prosecutions.
- 1348. — In general.
- 1349. — Indecent or obscene communications in general.
- 1350. — Soliciting minor for sex or illegal act; child pornography.
- 1351. — Prosecutions.

**IX. SPECIAL SERVICES OR ACTIVITIES.**

- 1400. In general.
- 1401. Private line communications.
- 1402. Alarm and security systems.
- 1403. — In general.
- 1404. — Contracts in general.
- 1405. — Tort liability in general.
- 1406. — Limitation or modification of liability.
- 1407. — Actions.
- 1408. Messenger and delivery service.
- 1409. News and information.
- 1410. — In general.
- 1411. — Financial or market reports; tickers.
- 1412. Music and entertainment, transmission of.
- 1413. Teletype and telephoto services.

**X. INTERCEPTION OR DISCLOSURE OF ELECTRONIC COMMUNICATIONS; ELECTRONIC SURVEILLANCE.****(A) IN GENERAL.**

- 1426. In general.
- 1427. Constitutional and statutory provisions.
- 1428. — In general.
- 1429. — Purpose.
- 1430. — Validity.
- 1431. — Retroactive operation.
- 1432. What law governs.
- 1433. Preemption.
- 1434. Wiretapping in general.

**X. INTERCEPTION OR DISCLOSURE OF ELECTRONIC COMMUNICATIONS; ELECTRONIC SURVEILLANCE.(Cont'd)**

- 1435. Acts constituting interception or disclosure.
- 1436. — In general.
- 1437. — Telephone communications.
- 1438. — Wireless or mobile communications.
- 1439. — Computer communications.
- 1440. — Persons concerned; consent.
- 1441. Persons liable; immunity.
- 1442. Actions.
- 1443. — In general.
- 1444. — Jurisdiction and venue.
- 1445. — Parties in general; standing.
- 1446. — Time to sue and limitations.
- 1447. — Pleading.
- 1448. — Evidence.
- 1449. — Trial.
- 1450. — Questions of law or fact.
- 1451. — Judgment and relief.
- 1452. — Costs and fees.
- 1453. Offenses and prosecutions.

**(B) AUTHORIZATION BY COURTS OR PUBLIC OFFICERS.**

- 1460. In general.
- 1461. Executive authorization or application.
- 1462. Necessity for judicial approval; emergency interception.
- 1463. Judicial authorization in general.
- 1464. Application or affidavit.
- 1465. — In general.
- 1466. — Probable cause.
- 1467. — Competency of information; hearsay.
  - (1). In general.
  - (2). Information from others in general.
  - (3). Reliability or credibility; corroboration.
  - (4). Anonymous or confidential informants.
  - (5). Citizens, victims or officers.
- 1468. — Necessity; inadequacy of other procedures.
- 1469. — Identification of persons subject to interception.
- 1470. Order or warrant in general.

**372. TELECOMMUNICATIONS****X. INTERCEPTION OR DISCLOSURE OF ELECTRONIC COMMUNICATIONS; ELECTRONIC SURVEILLANCE.**(Cont'd)

- 1471. Conduct and duration of surveillance.
- 1472. — In general.
- 1473. — Scope; minimization.
- 1474. — Extension.
- 1475. Carrier's cooperation; pen registers and tracing.
- 1476. Reports; delivery and sealing.
- 1477. Notice and disclosure to parties.
- 1478. Use of information obtained.
- 1479. Review of proceedings; standing.

**(C) TRACKING DEVICES.**

- 1485. In general.
- 1486. Transponders or "beepers" in general; warrantless proceedings.
- 1487. Warrants or judicial authorization.

**373. TENANCY IN COMMON****SUBJECTS INCLUDED**

- Nature and incidents of the estate of two or more persons in the same property held by them by several and distinct titles
- Rights, powers, and liabilities of tenants in common
- Actions and other proceedings between, by, or against them
- Severance of the tenancy otherwise than by partition

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Joint estate of two or more persons held at the same time and in virtue of the same title, interest and possession, generally with right of survivorship, see JOINT TENANCY
- Partition of property held in common, see PARTITION
- Partners' rights in firm property, see PARTNERSHIP
- Spouses, cotenancy between, see MARRIAGE AND COHABITATION

Wills and deeds, creation of cotenancy by, see DEEDS, WILLS

- I. CREATION AND EXISTENCE, ¶1-9.
- II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS, ¶10-38.
- III. RIGHTS AND LIABILITIES OF COTENANTS AS TO THIRD PERSONS, ¶39-55.

**I. CREATION AND EXISTENCE.**

- 1. Nature and incidents of cotenancy.
- 2. Constitutional and statutory provisions.
- 3. Creation of cotenancy.
- 4. Evidence of cotenancy.
- 5. Severance of cotenancy.
- 6. — In general.
- 7. — Agreements and conveyances between cotenants.
- 8. — Sales and conveyances to third persons.
- 9. Termination of cotenancy.

**II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS.**

- 10. Nature of the relation.
- 11. Title and rights in general.
- 12. Amount of respective shares of cotenants.
- 13. Character and effect of possession of cotenant.
- 14. Disseisin.
- 15. Adverse possession.
  - (1). In general.
  - (2). Necessity of actual ouster or notice of adverse claim.
  - (3). Distinct and exclusive possession.
  - (4). Duration and continuity of possession.
  - (5). Hostile character of possession in general.
  - (6). Possession consistent with title of cotenant.
  - (7). Notice and knowledge of character of possession by cotenant.
  - (9). Payment of taxes and making improvements.
  - (10). Evidence.
  - (11). Questions for jury.
- 16. Presumption of grant.



## 373. TENANCY IN COMMON

**II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS.(Cont'd)**

17. Acquisition of easement by cotenant.
18. Assertion of lien or charge.
19. Purchase of outstanding title or claim.
  - (1). In general.
  - (2). Nature and extent of rule.
  - (3). Purchase at judicial sale in general.
  - (4). Purchase at mortgage sale.
  - (5). Contribution to expense.
20. Acquisition of tax title.
  - (1). In general.
  - (2). Contribution to expense.
21. Enjoyment and use of property in general.
22. Mines and minerals.
23. Water rights.
24. Trees and timber.
25. Crops and other products of the soil.
26. Waste.
27. Conversion of personal property.
28. Rents and profits, and use and occupation.
  - (1). In general.
  - (2). Excess over proportionate share.
  - (3). Necessity and effect of disseisin, or of exclusive or adverse possession by cotenant.
  - (4). Extent of liability on accounting.
  - (5). Interest.
  - (6). Lien.
  - (7). Actions.
29. Repairs.
- 29.1. Improvements.
30. Incumbrances, taxes, and assessments.
31. Services, care, and management by cotenant.
32. Expenses and losses.
33. Agreements between cotenants.
34. Estoppel between cotenants.
35. Sales and conveyances to third persons.
36. Contribution.
37. Accounting.
38. Actions between cotenants.
  - (.5). In general.
  - (1). Right of action in general.
  - (2). Nature and form.
  - (3). Conditions precedent.

**II. MUTUAL RIGHTS, DUTIES, AND LIABILITIES OF COTENANTS.(Cont'd)**

- (4). Defenses.
- (5). Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
- (6). Parties.
- (7). Pleading.
- (8). Evidence.
- (9). Amount or items of recovery.
- (9.5). Instructions.
- (10). Questions for jury.
- (12). Verdict and findings.
- (13). Judgment.

**III. RIGHTS AND LIABILITIES OF COTENANTS AS TO THIRD PERSONS.**

39. Authority of cotenant in general.
40. Dedication to public use.
41. Creation of easement in favor of third person.
42. Sales and conveyances.
  - 42.1. — In general.
43. — Common property in general.
44. — Undivided share.
45. — Specific amount.
46. Mortgages and liens.
47. Foreclosure of mortgage or lien.
48. Pledges.
49. Leases.
50. Licenses.
51. Contracts.
52. Advances for benefit of property.
53. Fraud of cotenant.
54. Estoppel by acts, conduct, or statements of cotenant.
55. Actions by or against cotenants.
  - (.5). In general.
  - (1). Right and form of action.
  - (2). Defenses.
  - (2.5). Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
  - (3). Parties plaintiff.
  - (4). Parties defendant.
  - (5). Pleading.
  - (6). Evidence.
  - (7). Amount of recovery.
  - (7.5). Questions for jury.
  - (7.9). Instructions.

**373. TENANCY IN COMMON****III. RIGHTS AND LIABILITIES OF  
COTENANTS AS TO THIRD  
PERSONS.(Cont'd)**

- (8). Verdict and findings.
- (9). Judgment and execution.

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**374. TENDER****SUBJECTS INCLUDED**

Offer of money or its equivalent in satisfaction of pecuniary obligations in general

Nature, requisites, sufficiency, and effect of such tender

Acceptance or refusal thereof, and payment into court incident thereto

Pleading tender

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Contracts, tender of performance, see **CONTRACTS, SPECIFIC PERFORMANCE** and specific topics relating to particular classes of contracts

Effect of tender on liabilities for—

Costs, see **COSTS**

Interest, see **INTEREST**

Money paid into court, disposition of, see **DEPOSITS IN COURT**

- 1. Nature and purpose in general.
- 3. Statutory provisions.
- 4. Necessity.
- 5. Waiver of tender.
- 6. Persons by whom tender may be made.
- 7. Persons to whom tender may be made.
- 8. Place.
- 9. Time.
- 10. Mode and sufficiency.
- 11. — In general.
- 12. — Amount.
  - (1). In general.
  - (2). Necessity that full amount due be offered.
  - (3). Tender of more than is due.
  - (4). Costs and interest.

- 13. — Production and offer of money or equivalent.
  - (.5). In general.
  - (1). Necessity in general.
  - (2). Circumstances of offer.
  - (3). Readiness at place of payment.
  - (4). Deposit or money in possession of third person.

- 14. — Conditions.
  - (1). In general.
  - (2). Requiring receipt.
  - (3). Exacting change.
  - (4). Surrender of security or evidence of debt.
  - (5). Tender in full payment.

- 15. Objections, and making and waiver thereof.
  - (1). In general.
  - (2). Time for objection.
  - (3). Waiver of objection in general.
  - (4). Objections to amount.
  - (5). Objections for failure to produce money or equivalent.
  - (6). Objections to medium of tender.

- 16. Excuses for failure to make or insufficiency.
  - (1). In general.
  - (2). Refusal to accept.
  - (3). Excessive or unauthorized claim by creditor.
  - (4). Failure to produce money.

- 17. Acceptance.
- 18. Keeping good tender not accepted.
- 19. Operation and effect in general.
  - (1). In general.
  - (2). As admission or discharge of liability.

- 20. Effect of acceptance.
- 21. Effect of refusal.
- 22. Pleading.
- 23. Payment into court of amount tendered or admitted to be due.

- 23.1. — In general.
- 24. — Necessity.
- 25. — Sufficiency.
- 26. — Operation and effect.
- 27. — Acceptance and effect thereof.
- 28. Evidence.
- 29. Questions for jury.

**375. TERRITORIES**

- 30. Instructions.
- 31. Verdict or findings.

**375. TERRITORIES****SUBJECTS INCLUDED**

Territory of the United States not contained within the boundaries of any of the several states

Powers of the national government over such territory and application of laws of the United States thereto

Establishment and organization of territorial governments, appointment of governors and other officers thereof, and rights, powers, proceedings, and liabilities of such governments, their officers and agents

Actions by or against territories

Relinquishment of sovereignty and grant of partial or complete independence

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Citizens in the territories and their rights in general, see **ALIENS, IMMIGRATION, AND CITIZENSHIP, CIVIL RIGHTS, CONSTITUTIONAL LAW**

Election of members of territorial legislatures and other territorial officers, see **ELECTION LAW**

Eminent domain, power and exercise thereof, see **EMINENT DOMAIN**

Public lands, see **PUBLIC LANDS**

States, admission of territories into Union as, see **STATES**

Taxation and revenue, see **TAXATION**

- 1. Territory belonging to United States before adoption of Constitution.
  - 1.1. — In general.
- 3. — Construction and operation of Ordinance of 1787 and other acts of Congress.
- 4. Power of United States to acquire and control additional territory.
- 5. Acquisition of territory.

- 6. Construction and operation of treaties of cession.
- 7. Political status of territory acquired in general.
- 8. Application of Constitution and laws of United States to territory acquired.
- 9. Rights of persons and property in territory acquired.
- 10. Provisional or other temporary civil government.
- 11. Legislative power of Congress.
- 13. Political status and relations of organized territories.
- 14. Territorial extent and boundaries.
- 15. Construction and operation of organic act in general.
- 17. Governmental powers in general.
- 18. Application and operation in territories of acts of Congress.
- 19. Legislature.
- 20. Legislative power and exercise thereof in general.
- 22. Governor, and exercise of supreme executive authority.
- 23. Executive officers and agents.
- 25. Contracts in general.
- 28. Power to incur indebtedness or make expenditures.
- 29. Debts in general, appropriations, and payment.
- 31. Claims against territories.
- 32. Actions by or against territories.
- 33. Relinquishment of sovereignty.
- 34. Territorial courts.
 

*Exclusive, concurrent, and conflicting jurisdiction, see COURTS ¶540.*
- 35. — In general; establishment and organization.
- 36. — Jurisdiction and procedure in general.
- 37. — Courts of particular territories.
  - (1). In general.
  - (2). Puerto Rico.
  - (3). Virgin Islands.
  - (4). Guam.
  - (5). Northern Mariana Islands.
  - (6). American Samoa.
- 38. — Effect of admission of territory as state.

**377E. THREATS, STALKING, AND HARASSMENT****377E. THREATS, STALKING,  
AND HARASSMENT****SUBJECTS INCLUDED**

Threats of personal violence in general  
 Threats to prevent performance or refusal to perform any act  
 Following or harassing another with intent to annoy, intimidate, or alarm that person  
 Nature and elements of these crimes  
 Nature and extent of criminal responsibility therefor, and grounds of defense  
 Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Blackmail, see EXTORTION  
 Civil liabilities for threats, see TORTS  
 Effect of duress by menaces on validity of particular transactions, see CONTRACTS, DEEDS, CANCELLATION OF INSTRUMENTS, and other specific topics  
 Employment and labor relations, effect of threats in, see LABOR AND EMPLOYMENT  
 Harassment and threats via telephone or other electronic device, see TELECOMMUNICATIONS  
 Harassment as violation of civil rights statutes, see CIVIL RIGHTS  
 Hate crimes and ethnic intimidation, see CIVIL RIGHTS VI  
 Intimidating or threatening witnesses, see OBSTRUCTING JUSTICE  
 Kill, threats to, see HOMICIDE  
 Mailing threatening matter, see POSTAL SERVICE  
 Particular offenses, threats as evidence of commission or as justification, see ASSAULT AND BATTERY, HOMICIDE, and other specific topics  
 Security to keep the peace, threats as ground for, see PROTECTION OF ENDANGERED PERSONS  
 Threats made with intent to obstruct justice, see OBSTRUCTING JUSTICE

1. In general.
2. Statutory provisions.
3. — In general.

4. — Purpose.
5. — Validity.
6. — Retroactive operation.
7. Threats in general.
8. — In general.
9. — Nature of conduct.
10. — Intent; knowledge.
11. — Apprehension of harm.
12. — Federal offenses.
  - (1). In general.
  - (2). Nature of conduct.
  - (3). Intent; knowledge.
  - (4). Apprehension of harm.
  - (5). Interstate commerce.
13. Threats against officials or former officials.
14. — In general.
15. — Who is an official.
16. — Nature of conduct.
17. — Intent; knowledge.
18. — Apprehension of harm.
19. — Interstate commerce.
20. Harassment in general.
21. — In general.
22. — Nature of conduct.
23. — Intent; knowledge.
24. — Apprehension of harm.
25. Stalking in general.
26. — In general.
27. — Nature of conduct.
28. — Intent; knowledge.
29. — Apprehension of harm.
30. — Federal offenses.
  - (1). In general.
  - (2). Nature of conduct.
  - (3). Intent; knowledge.
  - (4). Apprehension of harm.
  - (5). Interstate commerce.
31. Degrees.
32. — In general.
33. — Aggravated stalking.
34. Attempts.
35. Defenses.
36. — In general.
37. — Consent.
38. — Protected activity.
39. Parties; aiding and abetting.
40. Indictment or information.
41. — In general.

**379. TORTS**

- 42. — Requisites and sufficiency.
- 43. — Issues, proof, and variance.
- 44. Evidence.
- 45. — In general.
- 46. — Admissibility.
- 47. — Presumptions and burden of proof.
- 48. — Weight and sufficiency.
  - (1). In general.
  - (2). Threats in general.
  - (3). Harassment in general.
  - (4). Stalking.
- 49. Trial.
- 50. — In general.
- 51. — Questions of law or fact.
- 52. — Instructions.
- 53. Sentence and punishment.
- 54. — In general.
- 55. — Threats in general.
- 56. — Harassment in general.
- 57. — Stalking.

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**378. TIME****SUBJECTS INCLUDED**

Measure of duration  
 The calendar and divisions thereof  
 Rules of computation of time in general

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Effect of lapse of time, see ADVERSE POSSESSION, LIMITATION OF ACTIONS, EQUITY, PAYMENT, and other specific topics

Particular acts and proceedings, time prescribed for, see APPEAL AND ERROR and other specific topics

- 1. The calendar.
- 2. Statutory provisions.
- 3. Computation in general; tolling.
- 3.5. Mailbox rule in general.
- 4. Years.
- 5. Months.
- 6. Weeks.

- 7. Days.
- 8. — In general.
- 8.5. — Mailbox rule.
- 9. — Excluding first or last day.
  - (1). In general.
  - (1.5). Civil proceedings in general.
  - (2). Limitation of actions.
  - (3). Pleading.
  - (4). Notices and process.
  - (5). Judgment and execution.
  - (6). New trial.
  - (7). Presentation, allowance, service, and filing of bill of exceptions.
  - (8). Appeal and error and other proceedings for review.
  - (9). Time for redemption.
  - (10). Interpretation and performance of contracts.
  - (11). Criminal proceedings.
- 10. — Sunday or other nonjudicial day.
  - (1). In general.
  - (2). In civil proceedings in general.
  - (3). Signing or returning bills sent to governor for approval.
  - (4). Limitation of actions.
  - (5). Notices and process.
  - (6). Judgment and execution.
  - (7). New trial.
  - (8). Signing, filing, and presenting bills of exception.
  - (9). Appeal and error and other proceedings for review.
  - (10). Interpretation and performance of contracts.
  - (11). Criminal proceedings.
- 11. — Fractions of day.
- 12. Hours.
- 13. — In general.
- 14. — Solar or standard time.
- 15. Indefinite words and phrases.

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**379. TORTS****SUBJECTS INCLUDED**

Actionable civil wrongs and violations of private rights, in general

**379. TORTS**

Intentional torts, in general

Torts based on contractual relations, in general

Prima facie tort

Tortious interference with contracts, business or other relations, expectancies, or legal remedies

Spoliation of evidence

Invasion of privacy

Other particular torts not covered by specific topics

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Liability for injury to person or property caused by negligence, see NEGLIGENCE and specific topics covering particular subjects of negligence

Damages for torts, see DAMAGES and specific topics relating to particular injuries

Emotional distress or mental suffering caused by intentional, reckless, or outrageous conduct, see DAMAGES

Interference with employment contracts or relationships, see LABOR AND EMPLOYMENT IX

Employer's vicarious liability for torts of employee, see LABOR AND EMPLOYMENT ¶3054

Particular torts covered by other topics, including ASSAULT AND BATTERY, FALSE IMPRISONMENT, FORCIBLE ENTRY AND DETAINER, FRAUD, LIBEL AND SLANDER, MALICIOUS PROSECUTION, NUISANCE, TRESPASS, CONVERSION AND CIVIL THEFT, and WASTE

Abuse of process, see PROCESS IV

Conspiracy to commit tort, see CONSPIRACY

Strict liability, see NEGLIGENCE VIII, and PRODUCTS LIABILITY

Trade secrets and proprietary information, torts relating to, see ANTITRUST AND TRADE REGULATION IV

Matters relating to form of, or choice between, tort and contract actions, see ACTION, and ELECTION OF REMEDIES

Matters peculiar to the status or capacity of persons or entities committing torts, see INFANTS, MENTAL HEALTH, PARTNERSHIP, CORPORATIONS AND

BUSINESS ORGANIZATIONS, and other specific topics

I. IN GENERAL, ¶101–150.

II. PRIMA FACIE TORT, ¶151–199.

III. TORTIOUS INTERFERENCE, ¶200–324.

(A) IN GENERAL, ¶200–209.

(B) BUSINESS OR CONTRACTUAL RELATIONS, ¶210–288.

1. IN GENERAL, ¶210–239.

2. PARTICULAR CASES, ¶240–249.

3. ACTIONS IN GENERAL, ¶250–255.

4. EVIDENCE, ¶256–269.

5. QUESTIONS OF LAW OR FACT, ¶270–279.

6. INSTRUCTIONS, ¶280–286.

7. VERDICT AND FINDINGS, ¶287–288.

(C) WILLS, INHERITANCES, TRUSTS AND GIFTS, ¶289–299.

(D) OBSTRUCTION OF OR INTERFERENCE WITH LEGAL REMEDIES; SPOILIATION, ¶300–324.

IV. PRIVACY AND PUBLICITY, ¶325–419.

(A) IN GENERAL, ¶325–329.

(B) PRIVACY, ¶330–382.

1. PRIVACY IN GENERAL, ¶330–339.

2. INTRUSION, ¶340–349.

3. PUBLICATIONS OR COMMUNICATIONS IN GENERAL, ¶350–362.

4. EVIDENCE, ¶363–374.

5. QUESTIONS OF LAW OR FACT, ¶375–378.

6. INSTRUCTIONS, ¶379–382.

(C) USE OF NAME, VOICE OR LIKENESS; RIGHT TO PUBLICITY, ¶383–409.

(D) ACTIONS IN GENERAL, ¶410–419.

V. OTHER MISCELLANEOUS TORTS, ¶420–456.

**I. IN GENERAL.**

101. In general.

102. Constitutional, statutory, and local regulation.

103. What law governs.

104. Preemption.

105. Purpose or function of tort law.

106. Nature and elements of torts in general.

**379. TORTS****I. IN GENERAL.**(Cont'd)

- 107. Private or legal wrong; wrongful act in general.
- 108. Private or legal right or interest, and violation thereof.
- 109. Duty and breach thereof in general.
- 110. Contracts in relation to torts.  
*Tort of bad faith, see* ⚭431; *distinction between forms of action, see ACTION* ⚭27; *contractual duty, see also NEGLIGENCE* ⚭219.
- 111. — In general.
- 112. — Breach of contract in general.
- 113. — Duty and breach thereof.
  - (1). In general.
  - (2). Contractual duty.
- 114. — Duty, breach, or wrong independent of contract.
- 115. Intent or malice.
- 116. Injury or damage from act.
- 117. — In general.
- 118. — Economic loss doctrine.
- 119. Proximate cause.
- 120. Defenses and mitigating circumstances.
- 121. — In general.
- 122. — Litigation privilege; witness immunity.
- 123. — Contributory fault in general.
- 124. — Illegal or immoral conduct of person injured; in pari delicto.
- 125. — Comparative fault; apportionment.
- 126. — Assumption of risk; consent or waiver.
- 127. Persons entitled to sue.
- 128. Privity.
- 129. Persons liable.
- 130. — In general.
- 131. — Vicarious liability.
- 132. — Concerted action in general.
- 133. — Aiding and abetting.
- 134. — Joint tortfeasors in general.
- 135. — Joint and several liability.
- 136. Actions in general.
- 137. Nature and form of remedy.  
*See also, ACTION* ⚭27.
- 138. Grounds and conditions precedent.
- 139. Time to sue and limitations.  
*See also, LIMITATION OF ACTIONS.*
- 140. Parties.
- 141. Pleading.
- 142. Evidence.

**I. IN GENERAL.**(Cont'd)

- 143. — In general.
- 144. — Presumptions and inferences.
- 145. — Burden of proof.
- 146. — Admissibility.
- 147. — Weight and sufficiency.
- 148. Questions of law or fact.
- 149. Instructions.
- 150. Verdict and findings.

**II. PRIMA FACIE TORT.**

- 151. In general.
- 153. What law governs.
- 154. Preemption.
- 155. Nature and elements in general.
- 156. Availability of other legal remedy; existence of established tort.
- 157. Intent and malice; motive.
- 158. Justification, or absence or insufficiency thereof.
- 159. Injury or damage from act; causation.
- 160. Balancing of factors or interests.
- 161. Particular cases.
- 162. Actions in general.
- 163. Nature and form of remedy.
- 164. Grounds and conditions precedent.
- 165. Time to sue and limitations.  
*See also, LIMITATION OF ACTIONS.*
- 166. Parties.
- 167. Pleading.
- 168. — In general.
- 169. — Special damages.
- 170. Evidence.
- 171. — In general.
- 172. — Presumptions and inferences.
- 173. — Burden of proof.
- 174. — Admissibility.
- 175. — Weight and sufficiency.
- 176. Questions of law or fact.
- 177. Instructions.
- 178. Verdict and findings.

**III. TORTIOUS INTERFERENCE.****(A) IN GENERAL.**

- 200. In general.
- 201. Constitutional, statutory, and local regulation.
- 202. What law governs.
- 203. Preemption.

**379. TORTS****III. TORTIOUS INTERFERENCE.(Cont'd)**

- 204. Interference with fiduciary relationships or duties, in general.
- 205. Interference with property or property rights, in general.

**(B) BUSINESS OR CONTRACTUAL RELATIONS.**

*Employment contracts or relationships, see LABOR AND EMPLOYMENT IX.*

**1. IN GENERAL.**

- 210. In general.
- 211. Business relations or economic advantage, in general.
- 212. Contracts.
- 213. Prospective advantage, contract or relations; expectancy.
- 214. Existence of valid or identifiable contract, relationship or expectancy.
- 215. Knowledge and intent; malice.
- 216. Negligence.
- 217. Absence of justification or privilege.
- 218. Improper means; wrongful, tortious or illegal conduct.
- 219. Injury and causation.
- 220. Defense, justification or privilege in general.
- 221. Competition.
- 222. Tortfeasor as stranger to contract or relationship, in general.
- 223. Employees and agents; corporate entities.  
*Interference with employment contracts, see LABOR AND EMPLOYMENT IX.*
- 224. Contributory fault.
- 225. Waiver or consent.
- 226. Persons entitled to sue.
- 227. Persons liable.
- 228. — In general.
- 229. — Vicarious liability.
- 230. — Concerted action.
- 231. — Aiding and abetting.
- 232. — Joint tortfeasors in general.
- 233. — Joint and several liability.

**2. PARTICULAR CASES.**

- 240. In general.
- 241. Business relations or economic advantage, in general.
- 242. Contracts in general.
- 243. Landlord and tenant.

**III. TORTIOUS INTERFERENCE.(Cont'd)**

- 244. Insurance in general.
- 245. Physicians and health care; health insurance.
- 246. Attorneys.

**3. ACTIONS IN GENERAL.**

- 250. In general.
- 251. Nature and form of remedy.
- 252. Grounds and conditions precedent.
- 253. Time to sue and limitations.  
*See also, LIMITATION OF ACTIONS.*
- 254. Parties.
- 255. Pleading.

**4. EVIDENCE.**

- 256. In general.
- 257. Presumptions and inferences.
- 258. Burden of proof.
- 259. Admissibility.
- 260. Weight and sufficiency.
- 261. — In general.
- 262. — Business relations or economic advantage, in general.
- 263. — Contracts in general.
- 264. — Landlord and tenant.
- 265. — Insurance in general.
- 266. — Physicians and health care; health insurance.
- 267. — Attorneys.

**5. QUESTIONS OF LAW OR FACT.**

- 270. In general.
- 271. Business relations or economic advantage, in general.
- 272. Contracts in general.
- 273. Landlord and tenant.
- 274. Insurance in general.
- 275. Physicians and health care; health insurance.
- 276. Attorneys.

**6. INSTRUCTIONS.**

- 280. In general.
- 281. Business relations or economic advantage, in general.
- 282. Contracts in general.
- 283. Landlord and tenant.
- 284. Insurance in general.



**379. TORTS****III. TORTIOUS INTERFERENCE.(Cont'd)**

- 285. Physicians and health care; health insurance.
- 286. Attorneys.

**7. VERDICT AND FINDINGS.**

- 287. In general.
- 288. Inconsistent verdict.

**(C) WILLS, INHERITANCES, TRUSTS AND GIFTS.**

- 289. In general.
- 290. Actions in general.
- 291. Availability, adequacy, exclusivity, and exhaustion of other remedies.
- 292. Time to sue and limitations.  
*See also, LIMITATION OF ACTIONS.*
- 293. Parties.
- 294. Pleading.
- 295. Evidence.
- 296. Questions of law or fact.
- 297. Instructions.
- 298. Verdict and findings.

**(D) OBSTRUCTION OF OR INTERFERENCE WITH LEGAL REMEDIES; SPOILIATION.**

- 300. Obstruction of or interference with legal remedies, in general.
- 301. — In general.
- 302. — Particular cases.
- 303. Spoliation, destruction, or loss of evidence.
- 304. — In general.
- 305. — Negligence.
- 306. — Particular cases.
- 307. Perjury or false testimony.
- 308. Actions in general.
- 309. Nature and form of remedy.
- 310. Grounds and conditions precedent.
- 311. Time to sue and limitations.  
*See also, LIMITATION OF ACTIONS.*
- 312. Parties.
- 313. Pleading.
- 314. Evidence.
- 315. — In general.
- 316. — Presumptions and inferences.
- 317. — Burden of proof.
- 318. — Admissibility.
- 319. — Weight and sufficiency.
- 320. Questions of law or fact.

**III. TORTIOUS INTERFERENCE.(Cont'd)**

- 321. Instructions.
- 322. Verdict and findings.

**IV. PRIVACY AND PUBLICITY.**

*Constitutional right to privacy in general, see CONSTITUTIONAL LAW XI.*

**(A) IN GENERAL.**

- 325. In general.
- 326. Constitutional, statutory, and local regulation.
- 327. What law governs.
- 328. Preemption.
- 329. Types of invasions or wrongs recognized.

**(B) PRIVACY.****1. PRIVACY IN GENERAL.**

- 330. In general.
- 331. Nature and extent of right in general.
- 332. Particular cases in general.
- 333. Defenses in general.
- 334. Public interest, record, figures.
- 335. Persons entitled to sue.
- 336. Persons liable.

**2. INTRUSION.**

- 340. In general.
- 341. Particular cases in general.
- 342. Defenses in general.
- 343. Public interest, record, figures.
- 344. Waiver or consent.
- 345. Persons entitled to sue.
- 346. Persons liable.

**3. PUBLICATIONS OR COMMUNICATIONS IN GENERAL.**

*Defamation, and injurious falsehood, see LIBEL AND SLANDER.*

- 350. In general.
- 351. Miscellaneous particular cases.
- 352. False light.
- 353. — In general.
- 354. — Particular cases in general.
- 355. Defenses in general.
- 356. Matters of public interest or public record; newsworthiness.
- 357. — In general.
- 358. — Public figures.
- 359. Litigation privilege; witness immunity.

**379. TORTS****IV. PRIVACY AND PUBLICITY.(Cont'd)**

- 360. Waiver or consent.
- 361. Persons entitled to sue.
- 362. Persons liable.

**4. EVIDENCE.**

- 363. Evidence in general.
- 364. Presumptions and inferences.
- 365. Burden of proof.
- 366. Admissibility.
- 367. Weight and sufficiency.
- 368. — In general.
- 369. — Intrusion.
- 370. — Publications or communications in general.
- 371. — False light.

**5. QUESTIONS OF LAW OR FACT.**

- 375. In general.
- 376. Intrusion.
- 377. Publications or communications in general.
- 378. False light.

**6. INSTRUCTIONS.**

- 379. In general.
- 380. Intrusion.
- 381. Publications or communications in general.
- 382. False light.

**(C) USE OF NAME, VOICE OR LIKENESS;  
RIGHT TO PUBLICITY.**

- 383. In general.
- 384. Nature and extent of right.
- 385. Elements of the tort in general.
- 386. Conduct or misappropriation actionable in general.
- 387. — In general.
- 388. — Name.
- 389. — Voice.
- 390. — Picture, photograph, or likeness.
  - (1). In general.
  - (2). Particular cases.
- 391. Defenses in general.
- 392. Matters of public interest or public record; newsworthiness.
- 393. — In general.
- 394. — Public figures.
- 395. Waiver or consent.

**IV. PRIVACY AND PUBLICITY.(Cont'd)**

- 396. Persons entitled to sue.
- 397. Persons liable.
- 398. Evidence.
- 399. — In general.
- 400. — Presumptions and inferences.
- 401. — Burden of proof.
- 402. — Admissibility.
- 403. — Weight and sufficiency.
- 404. Questions of law or fact.
- 405. Instructions.

**(D) ACTIONS IN GENERAL.**

- 410. In general.
- 411. Nature and form of remedy.
- 412. Grounds and conditions precedent.
- 413. Time to sue and limitations.  
*See also, LIMITATION OF ACTIONS.*
- 414. Parties.
- 415. Pleading.
- 416. Verdict and findings.

**V. OTHER MISCELLANEOUS TORTS.**

- 420. In general.
- 421. Constitutional, statutory, and local regulation.
- 422. What law governs.
- 423. Preemption.
- 424. Miscellaneous torts in general.
- 425. Injuries to person in general.
- 426. Transmission of disease.
- 427. Invasion of personal safety, security, or comfort in general.
- 428. Harassment in general; sexual harassment or solicitation.  
*See also, CIVIL RIGHTS, LABOR AND EMPLOYMENT.*
- 429. Injury to property or rights of property, in general.
- 430. Forgery.
- 431. Bad faith.  
*Bad faith in the insurance context, see INSURANCE XXVII(C), INSURANCE ¶3419.*
- 432. — In general.
- 433. — Contractual relations; implied covenants.
- 434. — Denial of existence of contract.
- 435. Abuse of rights.
- 436. Duress or coercion in general; extortion and threats.
- 437. Resort to or conduct of legal remedies.  
*See also MALICIOUS PROSECUTION; abuse of process, see PROCESS IV; remedy of striking pleadings, see PLEADING ¶358.*

**381. TOWNS****V. OTHER MISCELLANEOUS TORTS.(Cont'd)**

438. Debt collection.  
*See also CREDITORS' REMEDIES XIII, FINANCE, BANKING, AND CREDIT III(B)4, XVI(I).*
439. Injury or damage from act.
440. Persons entitled to sue.
441. Persons liable.
442. Actions in general.
443. Nature and form of remedy.
444. Grounds and conditions precedent.
445. Time to sue and limitations.  
*See also, LIMITATION OF ACTIONS.*
446. Parties.
447. Pleading.
448. Evidence.
449. — In general.
450. — Presumptions and inferences.
451. — Burden of proof.
452. — Admissibility.
453. — Weight and sufficiency.
454. Questions of law or fact.
455. Instructions.
456. Verdict and findings.

**380. TOWAGE****SUBJECTS INCLUDED**

- Employment of tugs or vessels of any kind to expedite the progress of other vessels
- Mutual rights, duties, and liabilities of tugs and tows, and their respective owners, charterers, and masters

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Collisions of tugs or tows with other vessels, see COLLISION
- Salvage by tugs, and towage as a salvage service, see SALVAGE
- Vessels in general, matters applicable to, see SHIPPING

1. What constitutes towage.
2. Statutory regulations.
3. Contracts.

4. Relation and duties of tug to tow in general.
5. Compensation.
6. — In general.
7. — Amount.
8. — Actions.
9. — Lien.
10. Loss of or injury to tow.
- 10.1. — In general.
11. — Negligence or fault of tug.
  - (1). In general.
  - (2). Vessels or persons liable.
  - (3). Mistakes of judgment.
  - (4). Making up tow.
  - (5). Stranding or foundering.
  - (6). Collision.
  - (7). Colliding with bridge or pier.
  - (8). Striking rocks or other obstructions.
  - (9). Stress of weather.
  - (10). Mooring, anchoring, or abandonment of tow.
  - (11). Breaking of line.
12. — Contributory negligence or fault of tow.
  - (1). In general.
  - (2). Negligence or fault of both vessels.
13. — Duties after disaster.
14. — Provisions of special contracts.
15. — Actions for damages.
  - (1). In general.
  - (2). Evidence.
  - (3). Damages.
16. — Lien for damages.
17. Mutual rights and liabilities of tows.
18. Loss of or injury to tug.
19. Injuries to third persons.

**381. TOWNS****SUBJECTS INCLUDED**

- The secondary territorial divisions of states or territories for political purposes, whether grouped to form counties or formed by

**381. TOWNS**

subdivision of counties, and whether designated as towns or townships

Their status as bodies politic and corporate

Their creation, organization, boundaries, alteration, and discontinuance

Town meetings in general

Local boards and officers, and their rights, powers, proceedings, and liabilities

Town property, contracts, indebtedness, bonds and other securities

Town taxes, claims against towns, and actions by or against towns

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Charitable and reformatory institutions, see ASYLUMS AND ASSISTED LIVING FACILITIES, HEALTH, INFANTS, PRISONS

Election of town officers, see ELECTION LAW

Municipal corporations in general and incorporated towns, villages, etc., see MUNICIPAL CORPORATIONS

Public lands, townships as subdivisions of, see PUBLIC LANDS

Public officers in general and civil service requirements, see PUBLIC EMPLOYMENT

Roads and bridges, see HIGHWAYS, BRIDGES

Special purposes, subdivisions created for, see EDUCATION, HIGHWAYS, ELECTION LAW, and other specific topics

Zoning, see ZONING AND PLANNING

I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS, ¶1–14.

II. GOVERNMENT AND OFFICERS, ¶15–34.

III. PROPERTY, CONTRACTS, AND LIABILITIES, ¶35–45.

IV. FISCAL MANAGEMENT, PUBLIC DEBT, SECURITIES, AND TAXATION, ¶46–61.

V. CLAIMS AGAINST TOWNS, ¶62–63.

VI. ACTIONS, ¶64–84.

**I. CREATION, ALTERATION, EXISTENCE,  
AND POLITICAL FUNCTIONS.**

1. Nature and status.

**I. CREATION, ALTERATION, EXISTENCE, AND  
POLITICAL FUNCTIONS.(Cont'd)**

2. Constitutional and statutory provisions.

3. Creation and organization.

4. Territorial extent and boundaries.  
*See also ZONING AND PLANNING.*

5. Alteration, and creation of new towns or townships.

5.1. — In general.

6. — Change of boundaries.

7. — Consolidation.

8. — Division.

9. — Proceedings.

10. — Operation and effect.

11. — Adjustment of pre-existing rights and liabilities.

12. Precincts and divisions for special purposes.  
*See also ZONING AND PLANNING.*

13. Classification.

14. Dissolution.

**II. GOVERNMENT AND OFFICERS.**

15. Governmental powers in general.  
*See also ZONING AND PLANNING.*

15.5. Power to make public improvements.

16. Legislative control of acts, rights, and liabilities.

17. Town meetings.

18. — In general.

19. — Calling, warrant, or notice.

20. — Notice of business to be transacted.

21. — Place and time.

22. — Organization and conduct.

23. — Right to vote, voting, and result.

24. — Record of proceedings.

25. — Review of proceedings.

26. Town board in general.

27. Creation and abolition of offices and employments.

28. Appointment or election, qualification, tenure, and removal of officers or employees.

29. Compensation of officers.

30. Authority and powers of officers.

31. Duties and liabilities of officers.

32. Accounting by officers for public funds or other property.

33. Liabilities on official bonds.

34. Criminal responsibility of officers.

**381. TOWNS****III. PROPERTY, CONTRACTS,  
AND LIABILITIES.**

- 35. Public buildings and other property.
  - (.5). In general.
  - (1). Acquisition, use and title to property.
  - (2). Lease or other disposition.
- 36. Capacity to contract in general.
- 37. Powers of town board or officers to contract.
- 38. Making, requisites, and validity of contracts.
- 39. Unauthorized or illegal contracts.
  - (.5). In general.
  - (1). Effect of illegality in general.
  - (2). Ratification.
- 40. Implied contracts.
- 41. Construction and operation of contracts.
- 42. Performance or breach and rescission of contracts.
- 43. Town expenses and charges.
- 44. Liabilities specially imposed by statute.
- 45. Torts.

**IV. FISCAL MANAGEMENT, PUBLIC DEBT,  
SECURITIES, AND TAXATION.**

- 46. Power to incur indebtedness and expenditures.
  - (1). In general.
  - (2). Aid to corporations, and subscription to or purchase of corporate stock.
  - (3). Borrowing money.
  - (4). Unauthorized debts or expenditures.
- 47. Constitutional and statutory provisions.
- 48. Administration of finances.
- 49. Appropriations and payment of indebtedness in general.
- 50. Warrants, orders, and certificates of indebtedness.
- 51. Bills and notes.
- 52. Bonds and other securities.
  - (1). In general.
  - (2). Purposes of issue of bonds in general.
  - (3). Aid to corporations.
  - (4). Proceedings preliminary to issue of bonds in general.

**IV. FISCAL MANAGEMENT, PUBLIC DEBT,  
SECURITIES, AND TAXATION.(Cont'd)**

- (5). Submission of question of issue of bonds to vote.
- (6). Form and contents, and execution of bonds.
- (7). Effect of invalidity of bonds.
- (8). Payment.
- 53. Taxation.
- 54. — In general.
- 55. — Purposes of taxation.
- 56. — Levy for general purposes of town.
- 57. — Levy for special purposes.
- 58. — Assessment.
- 59. — Payment, collection, and enforcement.
- 60. Disposition of proceeds of taxes and other revenue.
- 61. Rights and remedies of taxpayers.
- V. CLAIMS AGAINST TOWNS.**
- 62. Presentation and allowance.
- 63. Payment.

**VI. ACTIONS.**

- 64. Capacity to sue or be sued in general.
- 66. Rights of action.
- 67. Conditions precedent.
- 68. — In general.
- 69. — Notice or demand.
- 70. — Presentation of claim.
- 71. Defenses.
- 72. Jurisdiction and venue.
- 73. Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
- 74. Authority to sue or defend in behalf of town.
- 75. Parties.
- 76. Process.
- 77. Appearance and representation by attorney.
- 78. Pleading.
- 79. Evidence.
- 80. Trial.
- 81. Judgment.
- 82. Execution and enforcement of judgment.
- 84. Costs.

**382T. TRADEMARKS****382T. TRADEMARKS****SUBJECTS INCLUDED**

Trademarks, trade names, and trade dress  
 Their nature and incidents of rights to exclusive use thereof  
 Registration and regulation of such marks and names  
 Infringement and other violations of such rights and remedies therefor  
 Unfair competition involving such marks and names and remedies therefor

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Business names, non-trademark regulation of, see CORPORATIONS AND BUSINESS ORGANIZATIONS, PARTNERSHIP, and other specific topics  
 Copyrights, see COPYRIGHTS AND INTELLECTUAL PROPERTY  
 Internet domain names, non-trademark regulation of, see TELECOMMUNICATIONS  
 Names more generally, see NAMES  
 Patents, see PATENTS  
 Trade regulation more generally, see ANTI-TRUST AND TRADE REGULATION  
 Unfair competition more generally, see ANTI-TRUST AND TRADE REGULATION

- I. IN GENERAL, ¶1000–1019.
- II. MARKS PROTECTED, ¶1020–1079.
- III. SIMILARITY BETWEEN MARKS; LIKELIHOOD OF CONFUSION, ¶1080–1129.
- IV. CREATION AND PRIORITY OF RIGHTS, ¶1130–1149.
- V. DURATION AND TERMINATION OF RIGHTS, ¶1150–1179.
- VI. NATURE, EXTENT, AND DISPOSITION OF RIGHTS, ¶1180–1229.
- VII. REGISTRATION, ¶1230–1409.
  - (A) IN GENERAL, ¶1230–1279.
  - (B) PROCEEDINGS CONCERNING FEDERAL REGISTRATION, ¶1280–1349.
  - (C) EFFECT OF FEDERAL REGISTRATION, ¶1350–1379.
  - (D) MISUSE OF FEDERAL REGISTRATION, ¶1380–1409.
- VIII. VIOLATIONS OF RIGHTS, ¶1410–1549.
  - (A) IN GENERAL, ¶1410–1449.

- VIII. VIOLATIONS OF RIGHTS—Cont'd
  - (B) DILUTION, ¶1450–1489.
  - (C) MISUSE OF INTERNET DOMAIN NAMES; CYBERPIRACY AND CYBERSQUATTING, ¶1490–1519.
  - (D) DEFENSES, EXCUSES, AND JUSTIFICATIONS, ¶1520–1549.
- IX. ACTIONS AND PROCEEDINGS, ¶1550–1779.
  - (A) IN GENERAL, ¶1550–1579.
  - (B) PLEADING, ¶1580–1599.
  - (C) EVIDENCE, ¶1600–1649.
  - (D) DAMAGES AND PROFITS, ¶1650–1679.
  - (E) TRIAL AND JUDGMENT, ¶1680–1699.
  - (F) INJUNCTIONS, ¶1700–1749.
  - (G) COSTS, ¶1750–1779.
- X. OFFENSES AND PENALTIES, ¶1780–1799.
- XI. TRADEMARKS AND TRADE NAMES ADJUDICATED, ¶1800.

**I. IN GENERAL.**

- 1000. In general.
- 1001. Protection and regulation in general.
- 1002. Power to protect and regulate in general.
- 1003. Constitutional and statutory provisions.  
*See also* ¶1231, 1411, 1451, 1491, 1551, 1781.
- 1004. — In general.
- 1005. — Purpose and construction in general.
- 1006. — Validity.
- 1007. — Retroactive operation.
- 1008. Treaties and international conventions.  
*See also* ¶1236.
- 1009. What law governs.  
*See also* ¶1237, 1416, 1456, 1496, 1552.
- 1010. Preemption.  
*See also* ¶1238, 1417, 1457, 1497, 1553.
- 1011. Administrative regulation.  
*Registration, see VII.*
- 1012. — In general.
- 1013. — Proceedings and orders.
- 1014. — Judicial review.

**II. MARKS PROTECTED.**

*Marks protected against dilution and cybersquatting, see* ¶1468, 1499.

- 1020. In general.
- 1021. Nature of trademarks in general; definitions.
- 1022. Subject matter underlying trademarks.

**382T. TRADEMARKS****II. MARKS PROTECTED.(Cont'd)**

- 1023. — In general.
- 1024. — Services and service marks in general.
- 1025. — Particular goods, services, or other subject matter.  
*Trade dress, see ¶1061.*
- 1026. Trade names in general.
- 1027. Function and purpose of trademarks in general.
- 1028. Indication of origin or ownership; identification.
- 1029. Capacity to distinguish or signify; distinctiveness.
- 1030. — In general.
- 1031. — Inherent distinctiveness in general.
- 1032. — Acquired distinctiveness and secondary meaning in general.  
*See also ¶1037, 1048, 1063, 1065(2).*
- 1033. Levels or categories of distinctiveness in general; strength of marks in general.  
*Strength or fame as factor in likelihood of confusion analysis, see ¶1092. Famous marks as protected from dilution, see ¶1468.*
- 1034. Generic terms or marks.  
*Marks which become generic through use or over time, see ¶1166.*
- 1035. Descriptive terms or marks.
- 1036. — In general.
- 1037. — Acquired distinctiveness; secondary meaning.
- 1038. Suggestive terms or marks.
- 1039. Arbitrary or fanciful terms or marks.
- 1040. Names as marks.
- 1041. — In general.
- 1042. — Persons, names of.  
*Rights of others to use their own name, see ¶1526.*
- 1043. — Literary or creative works, names of.
- 1044. — Internet domain names.  
*Non-trademark regulation, see TELECOMMUNICATIONS.*
- 1045. Geographical terms or names as marks.
- 1046. — In general.
- 1047. — Descriptiveness.
  - (1). In general.
  - (2). Misdescriptiveness.
- 1048. — Acquired distinctiveness; secondary meaning.
- 1049. — Deception.  
*Deceptive matter more generally, see ¶1073.*

**II. MARKS PROTECTED.(Cont'd)**

- (1). In general.
- (2). Deceptive misdescriptiveness.
- 1050. Format or components of term or mark.
- 1051. — In general.
- 1052. — Letters or initials; abbreviations.
- 1053. — Foreign or obscure words or letters.
- 1054. — Peculiarities in spelling or printing.
- 1055. — Phrases; slogans.
- 1056. — Numerals.
- 1057. — Nonliteral elements.  
*Trade dress, see ¶1061.*
  - (1). In general.
  - (2). Color.
- 1058. — Multiple elements; combinations.
- 1059. — Size and position of elements.
- 1060. Multiple marks.
- 1061. Form, features, or design of product as marks; trade dress.
- 1062. — In general.
- 1063. — Distinctiveness; secondary meaning.
- 1064. — Functionality.
- 1065. — Particular cases or products.
  - (1). In general.
  - (2). Distinctiveness; secondary meaning.
  - (3). Functionality.
- 1066. Certification marks.
- 1067. Collective marks.
- 1068. Public entities and organizations, marks concerning.
- 1069. Social organizations, marks concerning.
- 1070. Labor organizations, marks or labels concerning.
- 1071. Other particular marks.
- 1072. Immoral or scandalous matter.
- 1073. False or deceptive matter.  
*Deceptive geographical terms or marks, see ¶1049.*

**III. SIMILARITY BETWEEN MARKS;  
LIKELIHOOD OF CONFUSION.**

- Necessity of similarity or confusion, see ¶1243, 1418.*
- 1080. In general.
- 1081. Factors considered in general.
- 1082. Miscellaneous particular cases; determinations based on multiple factors.
- 1083. Nature of confusion.

**382T. TRADEMARKS****III. SIMILARITY BETWEEN MARKS; LIKE-  
LIHOOD OF CONFUSION.(Cont'd)**

- 1084. — In general.
- 1085. — Extent or degree of confusion.
- 1086. — Actual confusion.
- 1087. — Time of confusion.
- 1088. — “Initial interest” confusion.
- 1089. — “Reverse” confusion.
- 1090. Nature of marks.
- 1091. — In general.
- 1092. — Strength or fame of marks; degree of distinctiveness.  
*Strength or fame more generally, see ¶1033.*
- 1093. Relationship between marks.
- 1094. — In general.
- 1095. — Similarity or dissimilarity in general.
- 1096. — Particular marks, relationship between.
- 1097. — Examination and comparison; construction as entirety.
- 1098. — Appearance, sound, and meaning.
- 1099. Nature of goods or services underlying marks.
- 1100. Relationship between goods or services underlying marks.
- 1101. — In general.
- 1102. — Similarity or dissimilarity in general.
- 1103. — Particular goods and services, relationship between.
- 1104. — Markets and territories; competition.  
*Priority, see ¶1137.*
- 1105. — Relative quality.
- 1106. Relationship between parties or actors using marks.
- 1107. Nature and circumstances of use of marks.  
*Fair use, parody, and other justified or permissible uses, see ¶1521.*
- 1108. — In general.
- 1109. — Particular uses.
- 1110. — Trade channels; sales, advertising, and marketing.
- 1111. Intent; knowledge of confusion or similarity.  
*Intent of infringer more generally, see ¶1437.*
- 1112. Persons confused; circumstances of sale.

**III. SIMILARITY BETWEEN MARKS; LIKE-  
LIHOOD OF CONFUSION.(Cont'd)**

- 1113. Accompaniments mitigating confusion; disclaimers.
- 1114. Doubt as to confusion.
- 1115. Other particular factors.
- 1116. Internet cases.
- 1117. Trade dress.
- 1118. — In general.
- 1119. — Particular cases.

**IV. CREATION AND PRIORITY OF RIGHTS.**

- 1130. In general.
- 1131. Conception, adoption, or appropriation of mark.
- 1132. Use of mark.
- 1133. — In general.
- 1135. — Adoption and use.
- 1136. — Nature and extent of use.
  - (1). In general.
  - (2). Particular cases.
- 1137. — Scope and priority of use; multiple users, markets, or territories.  
*Markets, territories, and competition as factors in likelihood of confusion analysis, see ¶1104.*
  - (1). In general.
  - (2). Particular cases.
- 1138. — Foreign use; foreign users.
- 1139. — Propriety or impropriety of use; motive and intent.  
*False, deceptive, or disparaging trademarks, see ¶1073. Misuse of already-established mark, see ¶1184. Intent of infringer, see ¶1111, 1437.*
- 1140. — Continuity of use.
- 1141. — Future use; plan or intent to use.
- 1142. Affixation.
- 1143. Other particular grounds or requirements.

**V. DURATION AND TERMINATION  
OF RIGHTS.**

- 1150. In general.
- 1151. Duration in general.
- 1152. Loss or termination of rights in general.
- 1153. Abandonment in general.
- 1154. Nature and manner of use.
- 1155. Extent of use; discontinuance and non-use.
- 1156. — In general.
- 1157. — Particular cases.



**382T. TRADEMARKS****V. DURATION AND TERMINATION  
OF RIGHTS.(Cont'd)**

- 1158. Discontinuance or transfer of business or assets.
- 1159. Prohibition of use or business.
- 1160. Change in mark.
- 1161. Change in subject matter underlying mark.
- 1162. Use by others.
- 1163. — In general.
- 1164. — Permission; voluntary arrangements.  
*Effect of "naked" licenses, see ¶1208.*
- 1165. — Objections; laches, acquiescence, and delay.
- 1166. Loss of distinctiveness; acquired generic meaning.
- 1167. Evidence.
- 1168. — In general.
- 1169. — Presumptions and burden of proof.
- 1170. — Admissibility.
- 1171. — Weight and sufficiency.
- 1172. Effect of loss, termination, or abandonment of rights.

**VI. NATURE, EXTENT, AND DISPOSITION  
OF RIGHTS.**

- 1180. In general.
- 1181. Mark as property; property rights in general.
- 1182. Right to use in general; exclusivity.
- 1183. — In general.
- 1184. — Manner of use; misuse.
- 1185. Right to control quality in general.
- 1186. Rights in gross; relation of mark to good will or business in general.  
*Assignments in gross, see ¶1201.*
- 1187. Persons entitled to assert rights.  
*Persons entitled to sue, see ¶1563.*
- 1188. — In general.
- 1189. — Change in business, effect of.
- 1190. — Succession or inheritance.
- 1191. Contracts in general.
- 1192. — In general.
- 1193. — Nature of trademark agreements; definitions.  
*Assignments in gross, see ¶1201. Implied licenses, see ¶1207. "Naked" licenses, see ¶1208.*
- 1194. — Formation; requisites and validity.

**VI. NATURE, EXTENT, AND DISPOSITION  
OF RIGHTS.(Cont'd)**

- 1195. — Construction and operation.
- 1196. — Duration and termination.
- 1197. Transfer or sale; assignments.
- 1198. — In general.  
*Nature and definition of trademark agreements, see ¶1193.*
- 1199. — Formation; requisites and validity.
- 1200. — Construction and operation.
  - (1). In general.
  - (2). Duties, rights, and violations.
  - (3). Competition by assignor.
- 1201. — Relation to business, assets, or good will; assignments in gross.
  - (1). In general.
  - (2). Transfer of business, assets, or good will as including mark.
- 1202. Licenses.
- 1203. — In general.  
*Nature and definition of trademark agreements, see ¶1193.*
- 1204. — Formation; requisites and validity.
- 1205. — Construction and operation.
  - (1). In general.
  - (2). Duties, rights, and violations.
  - (3). Effect as estoppel.
- 1206. — Duration and termination; revocation.
- 1207. — Implied licenses.
- 1208. — Control over use or quality; "naked" licenses.
- 1209. Franchise agreements.
- 1210. — In general.  
*Nature and definition of trademark agreements, see ¶1193.*
- 1211. — Formation; requisites and validity.
- 1212. — Construction and operation.
- 1213. — Duration and termination; revocation.
- 1214. Other particular dispositions of rights.

**VII. REGISTRATION.**

*Non-trademark registration of Internet domain names, see TELECOMMUNICATIONS.*

**(A) IN GENERAL.**

- 1230. In general.
- 1231. Constitutional and statutory provisions.

**382T. TRADEMARKS****VII. REGISTRATION.**(Cont'd)

- 1232. — In general.
- 1233. — Purpose and construction in general.
- 1234. — Validity.
- 1235. — Retroactive operation.
- 1236. Treaties and international conventions.
- 1237. What law governs.
- 1238. Preemption.
- 1239. Federal registration in general.
- 1240. Nature of registration.
- 1241. Necessity of registration.
- 1242. Right to registration in general.
- 1243. Eligibility for registration; grounds for allowing or denying.  
*Marks protected, see II. What constitutes similarity or confusion, see III. Grounds for opposition or cancellation, see ¶1292, 1299.*
- 1244. — In general.
- 1245. — Principal Register.
- 1246. — Supplemental Register.
- 1247. — Concurrent registration.  
*Proceedings, see ¶1288.*
- 1248. Persons entitled to registration.
- 1249. Issuance of registration.
- 1250. Notice of registration.  
*Misuse of notice, see VII(D).*
- 1251. Maintenance of registration.
- 1252. Duration of registration.
- 1253. — In general.
- 1254. — Reregistration and renewal of registration.  
*Proceedings, see ¶1304.*
- 1255. Alteration of registration.
- 1256. State registration.
- 1257. — In general.
- 1258. — Proceedings.
- 1259. — Effect.
- 1260. — Misuse.
- 1261. Foreign registration.
- 1262. — In general.
- 1263. — Proceedings.
- 1264. — Effect.
- 1265. — Misuse.
- 1266. Foreign marks or owners, registration in United States.

**(B) PROCEEDINGS CONCERNING  
FEDERAL REGISTRATION.**

- 1280. In general.
- 1281. Nature of proceedings; conversion.

**VII. REGISTRATION.**(Cont'd)

- 1282. Application and related materials.
- 1283. — In general.
- 1284. — Intent-to-use application.
- 1285. — Scope and effect.
- 1286. Disclaimer.
- 1287. Proceedings on application; examination.
- 1288. Concurrent use proceedings.  
*Grounds for concurrent registration, see ¶1247.*
- 1289. Interference.
- 1290. Opposition.
- 1291. — In general.
- 1292. — Grounds; issues.
- 1293. — Defenses; time for proceedings.
- 1294. — Persons entitled to oppose; standing; parties.
- 1295. — Pleadings and related materials.
- 1296. — Conduct of proceedings; hearing and determination.
- 1297. Cancellation.
- 1298. — In general.
- 1299. — Grounds; issues.
- 1300. — Defenses; time for proceedings.
- 1301. — Persons entitled to seek cancellation; standing; parties.
- 1302. — Pleadings and related materials.
- 1303. — Conduct of proceedings; hearing and determination.
- 1304. Reregistration and renewal of registration, proceedings concerning.  
*Grounds for reregistration and renewal, see ¶1254.*
- 1305. Discovery.
- 1306. Evidence.  
*Evidence of abandonment or other loss of rights, see ¶1167.*
- 1307. — In general.
- 1308. — Presumptions and burden of proof.
- 1309. — Admissibility.
- 1310. — Weight and sufficiency.
- 1311. — Degree of proof.
- 1312. Questions of law or fact.
- 1313. Administrative review.
- 1314. Conclusiveness and effect of administrative decisions.
- 1315. Judicial review or intervention.
- 1316. — In general.
- 1317. — Nature and form of remedy; jurisdiction and authority of courts.

**382T. TRADEMARKS****VII. REGISTRATION.(Cont'd)**

- (1). In general.
- (2). Multiple remedies or proceedings.
- 1318. — Decisions or acts reviewable.
  - (1). In general.
  - (2). Finality; ripeness.
  - (3). Mootness.
- 1319. — Preservation of questions in administrative proceeding; record.
- 1320. — Persons entitled to seek review or intervention; standing; parties.
- 1321. — Time for proceedings.
- 1322. — Scope of review.
- 1323. — Harmless error.
- 1324. — Proceedings on review.
- 1325. — Hearing.
- 1326. — Determination and disposition.
- 1327. — Further review.
- 1328. Costs and fees.

**(C) EFFECT OF FEDERAL REGISTRATION.**

- 1350. In general.
- 1351. Conclusiveness in general.
- 1352. Incontestability in general.
- 1353. — In general.
- 1354. — Grounds.
- 1355. — Proceedings to establish; affidavits.
- 1356. Substantive rights or procedural advantages in general.
- 1357. Effect as evidence in general.
- 1358. Particular effects; rights acquired.
- 1359. — In general.
- 1360. — Validity, ownership, and use.
- 1361. — Notice.
- 1362. — Infringement and other violations; likelihood of confusion.
- 1363. — Nature or type of mark; distinctiveness and strength.
- 1364. Scope of rights acquired; limitations.
- 1365. — In general.
- 1366. — Effect on rights of others in general.
- 1367. — Priority in general; multiple uses.
- 1368. — Words or symbols constituting mark.
- 1369. — Goods or services underlying mark; class.
- 1370. — Territorial extent.

**VII. REGISTRATION.(Cont'd)**

- 1371. Effect of denial, cancellation, or other loss of registration.  
*Effect of failure to register, see ¶1241.*

**(D) MISUSE OF FEDERAL REGISTRATION.**

- 1380. In general.
- 1381. False or fraudulent registration in general.
- 1382. — In general.
- 1383. — Proceedings.
- 1384. — Evidence.
- 1385. Cancellation for misuse.
- 1386. — In general.
- 1387. — False or fraudulent registration.
- 1388. — Proceedings.
- 1389. — Evidence.
- 1390. Effect in general; incontestability.
- 1391. Other remedies; damages, costs, and fees.

**VIII. VIOLATIONS OF RIGHTS.****(A) IN GENERAL.**

- 1410. In general.
- 1411. Constitutional and statutory provisions.
- 1412. — In general.
- 1413. — Purpose and construction in general.
- 1414. — Validity.
- 1415. — Retroactive operation.
- 1416. What law governs.
- 1417. Preemption.
- 1418. Practices or conduct prohibited in general; elements.  
*What constitutes similarity or confusion, see III.*
- 1419. — In general.
- 1420. — Unfair competition.
- 1421. — Infringement.
- 1422. Nature of defendant's use; use in commerce.
- 1423. Particular cases, practices, or conduct.  
*What constitutes similarity or confusion, see III.*
- 1424. — In general.
- 1425. — Unfair competition in general.
- 1426. — Infringement in general.
- 1427. — Advertising or marketing.
- 1428. — Passing off or palming off.
  - (1). In general.
  - (2). Reverse passing off or palming off.

**382T. TRADEMARKS****VIII. VIOLATIONS OF RIGHTS.(Cont'd)**

1429. — Use on genuine goods; resale under original marks or name.  
     (1). In general.  
     (2). Repaired, rebuilt, or altered goods.
1430. — Repackaging.  
     (1). In general.  
     (2). Reusing marked packages.
1431. — Substitution of goods.
1432. — Counterfeiting.  
     *Criminal liability, see ¶1787.*
1433. — Imports and exports.
1434. — Use of Olympic symbols.
1435. Internet use.  
     *Cybersquatting and cyberpiracy, see VIII(C).*
1436. Trade dress.
1437. Knowledge, intent, and motives; bad faith.  
     *Knowledge of confusion or similarity, intent to deceive, see ¶1111.*

**(B) DILUTION.**

1450. In general.
1451. Constitutional and statutory provisions.
1452. — In general.
1453. — Purpose and construction in general.
1454. — Validity.
1455. — Retroactive operation.
1456. What law governs.
1457. Preemption.
1458. Nature and elements in general.
1459. — In general.
1460. — Miscellaneous particular cases.
1461. Nature and extent of harm; similarity, competition, and confusion.
1462. Reduction of mark's capacity to identify; blurring.
1463. — In general.
1464. — Particular cases.
1465. Creation of unfavorable associations; tarnishment.
1466. — In general.
1467. — Particular cases.
1468. Marks protected; strength or fame.
1469. Nature of defendant's use; use in commerce.
1470. Internet use.  
     *Cybersquatting and cyberpiracy, see VIII(C).*
1471. Generic use.

**VIII. VIOLATIONS OF RIGHTS.(Cont'd)**

1472. Trade dress.
1473. Knowledge, intent, and motives; bad faith.
- (C) MISUSE OF INTERNET DOMAIN NAMES; CYBERPIRACY AND CYBERSQUATTING.**

*Non-trademark regulation of domain names, see TELECOMMUNICATIONS.*

1490. In general.
1491. Constitutional and statutory provisions.
1492. — In general.
1493. — Purpose and construction in general.
1494. — Validity.
1495. — Retroactive operation.
1496. What law governs.
1497. Preemption.
1498. Nature and elements in general.
1499. Marks protected.
1500. Nature of offending domain name; similarity and confusion.
1501. Practices or conduct prohibited.
1502. Knowledge, intent, and motives; bad faith.
1503. Rights of domain name holders; protection against overreaching.

**(D) DEFENSES, EXCUSES, AND JUSTIFICATIONS.**

1520. In general.
1521. Justified or permissible uses.
1522. — In general.
1523. — Identification or description.  
     (1). In general.  
     (2). Of one's own product; fair use.  
     (3). Of another's product; nominative and comparative use.
1524. — Expressive use; commentary.  
     *See also CONSTITUTIONAL LAW ¶1604.*  
     (1). In general.  
     (2). Parody or satire.
1525. — Use by prior consent.  
     (1). In general; scope.  
     (2). Duration of consent; post-termination use.
1526. — Use of own name.  
     *Names as protected marks, see ¶1040.*
1527. — Other particular uses.
1528. Discontinuance of use or infringement.
1529. Use or infringement by third parties.

**382T. TRADEMARKS****VIII. VIOLATIONS OF RIGHTS.**(Cont'd)

- 1530. Conduct or misconduct of plaintiff in general.
- 1531. Misuse of mark by plaintiff.
- 1532. Invalidity of mark or registration; loss of rights.
- 1533. Delay in assertion of rights; laches.
- 1534. — In general.
- 1535. — Knowledge of facts.
- 1536. — Length of delay.
- 1537. — Prejudice from delay.
- 1538. — Effect of changes in defendant's use; progressive encroachment.
- 1539. Acquiescence.
- 1540. Estoppel.
- 1541. Waiver.

**IX. ACTIONS AND PROCEEDINGS.**

*Judicial review of or intervention into federal registration, see* Ⓒ1315.

**(A) IN GENERAL.**

- 1550. In general.
- 1551. Constitutional and statutory provisions.
- 1552. What law governs.
- 1553. Preemption.
- 1554. Nature and form of remedy.
- 1555. Existence of other remedy.
- 1556. Conditions precedent.
- 1557. Jurisdiction.
- 1558. — In general.
- 1558.5. — Personal jurisdiction in general.
- 1559. — Foreign commerce.
- 1560. — Internet use; cybersquatting.
- 1561. Venue.
- 1562. Time to sue and limitations.
- 1563. Persons entitled to sue.

*Persons entitled to assert rights more generally, see* Ⓒ1187.

- 1564. Persons liable.
- 1565. — In general.
- 1566. — Contributory liability.
- 1567. Parties.
- 1568. Process.
- 1569. Ex parte seizure.

**(B) PLEADING.**

- 1580. In general.
- 1581. Complaint or petition.
- 1582. — In general.

**IX. ACTIONS AND PROCEEDINGS.**(Cont'd)

- 1583. — Infringement.
- 1584. — Unfair competition.
- 1585. — Dilution.
- 1586. — Misuse of internet domain names; cybersquatting.
- 1587. — Trade dress.
- 1588. Answer and counterclaim.
- 1589. Amended and supplemental pleadings.
- 1590. Issues, proof, and variance.

**(C) EVIDENCE.**

*Evidence of abandonment or other loss of rights, see* Ⓒ1167.

- 1600. In general.
- 1601. Presumptions and burden of proof.
- 1602. — In general.
- 1603. — Infringement in general.
- 1604. — Unfair competition in general.
- 1605. — Dilution.
- 1606. — Misuse of internet domain names; cybersquatting.
- 1607. — Creation and priority of rights.
- 1608. — Marks protected; secondary meaning.
- 1609. — Similarity; likelihood of confusion.
- 1610. — Knowledge, intent, and motive; bad faith.
- 1611. — Trade dress.
- 1612. — Defenses, excuses, and justifications.
- 1613. Admissibility.
- 1614. — In general.
- 1615. — Infringement in general.
- 1616. — Unfair competition in general.
- 1617. — Dilution.
- 1618. — Misuse of internet domain names; cybersquatting.
- 1619. — Consumer data and market research; tests and surveys.
- 1620. Weight and sufficiency.
- 1621. — In general.
- 1622. — Infringement in general.
- 1623. — Unfair competition in general.
- 1624. — Dilution.
- 1625. — Misuse of internet domain names; cybersquatting.
- 1626. — Creation and priority of rights.
- 1627. — Marks protected.

**382T. TRADEMARKS****IX. ACTIONS AND PROCEEDINGS.(Cont'd)**

- 1628. — Secondary meaning.
  - (1). In general.
  - (2). Particular cases.
  - (3). Consumer data and market research; tests and surveys.
- 1629. — Similarity; likelihood of confusion.
  - (1). In general.
  - (2). Actual confusion.
  - (3). Particular cases.
  - (4). Consumer data and market research; tests and surveys.
- 1630. — Knowledge, intent, and motive; bad faith.
- 1631. — Trade dress.
- 1632. — Defenses, excuses, and justifications.

**(D) DAMAGES AND PROFITS.**

- 1650. In general.
- 1651. Laches, acquiescence, or estoppel.
- 1652. Damages.
- 1653. — In general.
- 1654. — Confusion or deception.
- 1655. — Intent; fraud.
- 1656. — Elements of damages.
  - (1). In general.
  - (2). Corrective advertising.
  - (3). Loss of profits or royalties.
  - (4). Good will.
- 1657. — Measure and amount.
- 1658. — Enhanced damages; double or treble damages.
- 1659. — Punitive or exemplary damages.
- 1660. — Evidence.
- 1661. Profits; accounting.
- 1662. — In general.
- 1663. — Confusion or deception.
- 1664. — Intent; fraud.
- 1665. — Measure and amount.
  - (1). In general.
  - (2). Deductions and credits.
- 1666. — Evidence.

**(E) TRIAL AND JUDGMENT.**

- 1680. In general.
- 1681. Reference.
- 1682. Questions of law or fact.

**IX. ACTIONS AND PROCEEDINGS.(Cont'd)**

- 1683. — In general.
- 1684. — Infringement in general.
- 1685. — Unfair competition in general.
- 1686. — Dilution.
- 1687. — Misuse of internet domain names; cybersquatting.
- 1688. — Creation and priority of rights.
- 1689. — Marks protected.
- 1690. — Secondary meaning.
- 1691. — Similarity; likelihood of confusion.
- 1692. — Knowledge, intent, and motive; bad faith.
- 1693. — Trade dress.
- 1694. — Defenses, excuses, and justifications.
- 1695. Instructions.
- 1696. Findings.
- 1697. Judgment and relief.

**(F) INJUNCTIONS.**

- 1700. In general.
- 1701. Preliminary or temporary injunctions.
- 1702. — In general.
- 1703. — Discretion.
- 1704. — Grounds and subjects of relief.
  - (1). In general.
  - (2). Infringement in general.
  - (3). Unfair competition in general.
  - (4). Passing off or palming off.
  - (5). Counterfeiting.
  - (6). Dilution.
  - (7). Misuse of internet domain names; cybersquatting.
  - (8). Ownership; marks protected.
  - (9). Similarity; likelihood of confusion.
  - (10). Trade dress.
- 1705. — Defenses.
  - (1). In general.
  - (2). Laches and estoppel.
- 1706. — Persons who may be restrained.
- 1707. — Proceedings.
  - (1). In general.
  - (2). Pleading.
  - (3). Evidence in general.
  - (4). Presumptions and burden of proof.

**384. TREASON****IX. ACTIONS AND PROCEEDINGS.(Cont'd)**

- (5). Admissibility.
- (6). Weight and sufficiency.
- (7). Hearing and determination.
- 1708. — Conditions on granting or refusing; bonds.
- 1709. — Scope and extent of relief.
- 1710. — Construction and operation.
- 1711. — Continuing, modifying, vacating, or dissolving.
- 1712. Permanent injunctions.
- 1713. — In general.
- 1714. — Grounds and subjects of relief.
  - (1). In general.
  - (2). Infringement.
  - (3). Unfair competition.
  - (4). Dilution.
  - (5). Misuse of internet domain names; cybersquatting.
  - (6). Trade dress.
- 1715. — Defenses or objections.
  - (1). In general.
  - (2). Cessation of violation.
- 1716. — Evidence.
- 1717. — Scope and extent of relief.
  - (1). In general.
  - (2). Infringement in general.
  - (3). Unfair competition in general.
  - (4). Dilution.
  - (5). Misuse of internet domain names; cybersquatting.
  - (6). Trade dress.
  - (7). Persons who may be restrained.
  - (8). Territorial limits.
- 1718. — Construction and operation.
- 1719. — Amendment and modification.
- 1720. Violation and enforcement; contempt.
- 1721. — In general.
- 1722. — Acts constituting violation.
- 1723. — Proceedings.
- 1724. — Punishment.

**(G) COSTS.**

- 1750. In general.
- 1751. Amount and items in general.
- 1752. Attorney fees.
- 1753. — In general.
- 1754. — Grounds.
  - (1). In general.

**IX. ACTIONS AND PROCEEDINGS.(Cont'd)**

- (2). Exceptional cases; intent or bad faith.
- 1755. — Amount, rate, and items.
- 1756. — Proceedings.

**X. OFFENSES AND PENALTIES.**

- 1780. In general.
- 1781. Constitutional and statutory provisions.
- 1782. — In general.
- 1783. — Purpose and construction in general.
- 1784. — Validity.
- 1785. — Retroactive operation.
- 1786. Offenses in general.
- 1787. False, counterfeit, or imitation marks or labels.  
*Civil liability, see §1432.*
- 1788. Criminal prosecutions.
- 1789. — In general.
- 1790. — Indictment, information, or complaint.
- 1791. — Evidence.
- 1792. — Trial.
- 1793. — Sentencing and punishment.
- 1794. Penalties; actions and proceedings.

**XI. TRADEMARKS AND TRADE NAMES ADJUDICATED.**

- 1800. Alphabetical listing.

**384. TREASON****SUBJECTS INCLUDED**

- Breach of allegiance by levying war against the government, adhering to or aiding its enemies, etc., and concealment of such treasonable acts of others
- Nature and elements of the crimes of treason and misprision of treason
- Nature and extent of criminal responsibility therefor, and grounds of defense
- Prosecution and punishment of such acts as public offenses

**384. TREASON****SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

- Conspiracies, see CONSPIRACY
- Neutrality laws, violations of, see INTERNATIONAL LAW III(D)
- Seditious acts and practices, insurrections, revolts, etc., see INSURRECTION AND SEDITION
1. Nature and elements in general.
  2. Constitutional and statutory provisions.
  3. Intent.
  4. Sovereignty offended.
  5. Levying war.
  6. Adhering or giving aid and comfort to enemies.
  7. Inciting and persuading others.
  8. Misprision and concealment of treason.
  9. Defenses.
  10. Persons liable.
  11. Preliminary proceedings in prosecution.
  12. Indictment or information.
  13. Evidence.
  14. Trial.

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**386. TRESPASS****SUBJECTS INCLUDED**

- Injuries to person, property, or rights, committed with force, not constituting or not regarded as a tort or offense of any distinct class
- Justification or excuse for such acts
- Nature and extent of liability for such injuries
- Actions of trespass and like actions for damages for trespasses
- Criminal responsibility for malicious or wanton trespass, and prosecution and punishment thereof as a public offense

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

- Animals, liabilities for trespass by, see ANIMALS
- Assault and battery, see ASSAULT AND BATTERY

Case, action on, see ACTION ON THE CASE

Distinction between action of trespass and other forms of actions, see ACTION

False imprisonment, see FALSE IMPRISONMENT

Forcible entry and detainer, proceedings in actions for, see FORCIBLE ENTRY AND DETAINER, LANDLORD AND TENANT

Indian lands, issues peculiar to, see INDIANS ¶199

Negligence toward trespassers and licensees, see NEGLIGENCE, RAILROADS, and other specific topics

Officers' rights, powers, and liabilities in execution of process, see SHERIFFS AND CONSTABLES

Trespass to try title, see TRESPASS TO TRY TITLE

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**I. ACTS CONSTITUTING TRESPASS  
AND LIABILITY THEREFOR,**  
¶1–15.

**II. ACTIONS,** ¶16–75.

(A) RIGHT OF ACTION AND DEFENSES, ¶16–31.

(B) PROCEEDINGS IN GENERAL,  
¶32–43.

(C) EVIDENCE, ¶44–46.

(D) DAMAGES, ¶47–63.

(E) TRIAL, ¶64–70.

(F) JUDGMENT, ¶71–73.

(G) REVIEW, ¶74.

(H) COSTS, ¶75.

**III. CRIMINAL RESPONSIBILITY,**  
¶76–91.

**I. ACTS CONSTITUTING TRESPASS  
AND LIABILITY THEREFOR.**

1. Nature and elements of trespass in general.
- 1.5. What law governs.
- 1.6. Preemption.
2. Intent.
3. Force.
4. Trespass to the person.
5. Trespass to personal property.
6. — In general.
7. — Destruction of or injury to property.
8. — Taking, carrying away, or detaining property.
9. Trespass to real property.



**386. TRESPASS****I. ACTS CONSTITUTING TRESPASS AND LIABILITY THEREFOR.(Cont'd)**

10. — In general.
11. — Property and rights subject of trespass.
12. — Entry.
13. — Wrongful act after rightful entry and trespass ab initio.
14. — Injury to property.
15. — Mesne profits.

**II. ACTIONS.****(A) RIGHT OF ACTION AND DEFENSES.**

16. Nature and scope of remedy in general.
17. Particular forms of action of trespass.
18. Statutory provisions and remedies.
19. Title to support action.
  - (.5). In general.
  - (1). Necessity and sufficiency of title in general.
  - (2). Possession as evidence of title, and adverse possession.
  - (3). Equitable title.
  - (4). Exception or reservation in deed.
  - (5). License.
  - (6). Tax titles.
  - (7). Interests in public lands.
  - (8). Statutory action for cutting trees.
  - (9). Personal property.
20. Possession or right of possession of plaintiff.
  - (.5). In general.
  - (1). Necessity and effect in general.
  - (2). Title without actual possession.
  - (3). Possession without title.
  - (4). Sufficiency of possession.
  - (4.1). — In general.
  - (5). — Possession of part of tract or of neighboring tract.
  - (6). — Entry or re-entry.
  - (7). Possession to support statutory action for cutting trees.
  - (8). Personality.
21. Conditions precedent.
22. Defenses.
23. — In general.
24. — Exercise of authority or duty.
25. — Consent or license.
26. — Defense of person or property.

**II. ACTIONS.(Cont'd)**

27. — Title or right of possession of defendant or third person.
29. Persons entitled to sue.
30. Persons liable.
31. Joint and several liability.

**(B) PROCEEDINGS IN GENERAL.**

32. Jurisdiction of subject-matter.
33. Jurisdiction of the person.
34. Venue.
35. Time to sue.  
*See also LIMITATION OF ACTIONS.*
36. Parties plaintiff.
37. Parties defendant.
38. Process and appearance.
39. Mode and form of pleading in general.
40. Declaration, complaint, or petition.
  - (1). In general.
  - (2). Allegations of title and possession.
  - (3). Description of property involved.
  - (4). Statement of acts constituting trespass.
  - (5). Allegations as to damages.
41. Plea or answer.
42. Replication or reply and subsequent pleadings.
43. Issues, proof, and variance.
  - (.5). In general.
  - (1). Issues raised by and evidence admissible under pleadings.
  - (1.1). — In general.
  - (2). — General issue or general denial.
  - (3). Matters to be proved.
  - (4). Variance between allegations and proof.

**(C) EVIDENCE.**

44. Presumptions and burden of proof.
45. Admissibility.
  - (1). In general.
  - (2). Ownership and possession.
  - (3). Acts constituting and place of trespass.
  - (4). Consent or license.
  - (5). Damages.
  - (6). Statutory action for cutting trees.
46. Weight and sufficiency.
  - (1). In general.

**386. TRESPASS****II. ACTIONS.**(Cont'd)

- (2). Title and possession.
- (3). Damages.

**(D) DAMAGES.**

- 47. Grounds and elements of compensatory damages in general.
- 48. Injuries to the person.
- 49. Destruction or loss of or injuries to personal property.
- 50. Entry on and injuries to real property.
- 51. Continuing trespass to real property.
- 52. Cutting and removal of trees.
- 53. Mesne profits.
- 54. Aggravation of damages.
- 55. Mitigation of damages.
- 56. Exemplary damages.
- 57. Amount awarded.
- 58. Inadequate and excessive damages.
- 59. Grounds for multiple damages.
- 60. — In general.
- 61. — Cutting and removal of trees.
- 62. Penalties as damages.
- 62.1. — In general.
- 63. — Cutting and removal of trees.

**(E) TRIAL.**

- 64. Dismissal or nonsuit before trial.
- 65. Scope of inquiry and powers of court.
- 67. Questions for jury.
- 68. Instructions.
  - (1). In general.
  - (2). Statutory action for cutting trees.
- 69. Verdict and findings.

**(F) JUDGMENT.**

- 71. In general.
- 72. Form and requisites.
- 73. Operation and effect.

**(G) REVIEW.**

- 74. In general.

**(H) COSTS.**

- 75. In general.

**III. CRIMINAL RESPONSIBILITY.**

- 76. Nature and elements of offenses in general.

**III. CRIMINAL RESPONSIBILITY.**(Cont'd)

- 77. Statutory provisions.
- 78. Property and rights subject of trespass.
- 79. Acts constituting criminal trespass in general.
- 80. Malicious, willful, or wanton trespass.
- 81. Trespass after warning or notice.
- 82. Forcible trespass.
- 83. Cutting and removal of timber.
- 84. Defenses.
- 85. Persons liable.
- 87. Indictment or information.
- 88. Evidence.
- 89. Trial.
- 91. Sentence and punishment.

**387. TRESPASS TO TRY TITLE****SUBJECTS INCLUDED**

Actions for recovery of specific real property, founded on right to damages for trespass thereon, where the ownership is disputed

Nature and scope of the remedy in general

Grounds of such actions and defenses thereto

By and against whom and as to what property they may be maintained

Procedure therein

Incidental recovery for use and occupation, profits, damages, improvements, etc.

Verdict and judgment and enforcement thereof, and costs in such actions

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Damages merely, actions for based on trespass, see TRESPASS

Forcible entry, unlawful detainer, etc., actions founded on, see FORCIBLE ENTRY AND DETAINER, LANDLORD AND TENANT

Mesne profits, etc., incidental to recovery of possession, actions of trespass for, see ENTRY, WRIT OF, EJECTMENT, REAL ACTIONS

**387. TRESPASS TO TRY TITLE**

Possession, actions founded on right of, together with right to damages for deprivation thereof, see EJECTMENT

Real actions in general—

Founded on mere right of possession, see ENTRY, WRIT OF

Founded on right of property, see REAL ACTIONS

**I. RIGHT OF ACTION AND DEFENSES,**  
 ⚡1–22.

**II. PROCEEDINGS,** ⚡23–50.

**III. DAMAGES, USE AND OCCUPATION, IMPROVEMENTS, AND TAXES,** ⚡51–60.

**I. RIGHT OF ACTION AND DEFENSES.**

1. Nature and scope of remedy.
3. Property which may be subject of action.
4. Grounds of action and conditions precedent in general.
5. Title to support action.
6. — In general.
- 6.1. — Sufficiency in general.
- 6.2. — Title acquired after commencement of suit.
7. — Adverse possession.
8. — Interest in public lands.
9. — Paper title.
10. — Equitable title.
11. — Title from common source.
12. Right of plaintiff to possession.
13. Possession of defendant.
14. Demand or notice to quit.
15. Defenses.
16. — In general.
17. — Adverse possession.
18. — Title or right of possession of third person.
19. — Equitable defenses.
20. — Set-off and counterclaim.
21. Successive actions.
22. Cross-actions.

**II. PROCEEDINGS.**

23. Jurisdiction.
24. Venue.
25. Time to sue, limitations, and laches.  
*See also LIMITATION OF ACTIONS.*
26. Parties plaintiff.

**II. PROCEEDINGS.**(Cont'd)

27. Parties defendant.
28. Intervention or bringing in of warrantor or others.
29. Process and appearance.
30. Surveys.
31. Pleading.
- 31.1. — In general.
32. — Declaration or petition.
33. — Plea or answer and subsequent pleadings.
34. — Disclaimer.
35. — Issues, proof, and variance.
  - (.5). In general.
  - (1). Issues, and evidence admissible under pleadings in general.
  - (2). Matters provable under plea of not guilty, or general issue.
  - (3). Evidence admissible under abstracts of title filed in case.
  - (4). Variance.
36. Filing abstract of title.
37. Evidence.
- 37.1. — In general.
38. — Presumptions and burden of proof.
  - (.5). In general.
  - (1). Title in general.
  - (2). Title from common source.
  - (3). Possession or right thereto.
39. — Admissibility in general.
  - (.5). In general.
  - (1). Title in general.
  - (2). Title from common source.
  - (3). Possession or right thereto.
  - (4). Identity and description of property.
40. — Documentary evidence.
  - (1). In general.
  - (2). Bonds for title, leases, and contracts in general.
  - (3). Certificates for public lands, and proceedings in land office.
  - (4). Private deeds and conveyances, and records thereof.
  - (5). Judicial proceedings, and sales under order of court.
  - (6). Field notes.
  - (7). Abstract of title filed in case.
41. — Weight and sufficiency.

**387. TRESPASS TO TRY TITLE****II. PROCEEDINGS.**(Cont'd)

- (1). In general.
- (2). Title from common source.
- (3). Identity and description of property.
- (4). Identity of persons.
- 42. Trial.
- 42.1. — In general.
- 44. — Questions for jury.
- 45. — Instructions.
  - (1). In general.
  - (2). Identity of persons or property.
- 46. — Verdict and findings.
- 47. Judgment.
  - (1). In general.
  - (2). Effect of disclaimer.
  - (3). Relief to defendants.
- 48. Execution and enforcement of judgment.
- 50. Costs.

**III. DAMAGES, USE AND OCCUPATION, IMPROVEMENTS, AND TAXES.**

- 51. Statutory provisions.
- 52. Damages for entry on or injuries to property.
- 53. Use and occupation.
- 55. Improvements.
- 56. — In general.
- 57. — Possession and good faith as grounds for compensation.
- 58. — Set-off against value of use and occupation.
- 59. — Proceedings for recovery of compensation.
- 60. Reimbursement of taxes paid.

**388. TRIAL****SUBJECTS INCLUDED**

Judicial examination and determination of issues in civil cases, more particularly of issues of fact by courts sitting with or without a jury

Bringing cases to trial, notices of trial, notes of issue, and calendars and lists of causes for trial

Course and order of proceedings at trials in general

Reception of evidence and objections thereto

Arguments and conduct of counsel

Relative functions of court and jury

Instructions to juries in general

Custody and conduct of jury

Verdicts or other findings of juries

Findings and decisions by courts on trials without a jury

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Adjournment or postponement of trial, see PRETRIAL PROCEDURE

Administrative hearings, see ADMINISTRATIVE LAW AND PROCEDURE, LABOR AND EMPLOYMENT, and other specific topics

Arbitrators, umpires, etc., hearings by, see ALTERNATIVE DISPUTE RESOLUTION, LABOR AND EMPLOYMENT

Bankrupt or insolvent acts, hearings and proceedings under, see BANKRUPTCY, CREDITORS' REMEDIES  $\S$ 1183

Courts of special or limited jurisdiction, hearings in, see ADMIRALTY, COURTS, EQUITY, and other specific topics

Criminal cases, trial in, see CRIMINAL LAW and specific topics relating to particular offenses

Evidence, rules of, see EVIDENCE, CRIMINAL LAW and specific topics covering relevancy and sufficiency of particular evidence

Federal Rules of Civil Procedure affecting trial, see FEDERAL CIVIL PROCEDURE

Instructions to jury, questions peculiar to particular subject matter, see AUTOMOBILES and other specific topics

Jury trial, constitutional right, and selection, impaneling and swearing jury, see JURY

Justices of the peace, trials before, see JUSTICES OF THE PEACE

Motions, demurrers and similar incidental proceedings, hearings on, see MOTIONS, PLEADING, PROCESS, and other specific topics

**388. TRIAL**

Particular causes or forms of action, or defenses or matters of fact, trials on issues and particularly questions of law or fact, see AUTOMOBILES and other specific topics

Place of trial, see VENUE

Pretrial conference, see PRETRIAL PROCEDURE

Referees, trials by, see REFERENCE

Submissions of controversies, hearings on, see SUBMISSION OF CONTROVERSY

Witnesses, attendance and examination, see WITNESSES

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- I. NOTICE OF TRIAL AND PRELIMINARY PROCEEDINGS, ¶1–8.
  - II. DOCKETS, LISTS, AND CALENDARS, ¶9–17.
  - III. COURSE AND CONDUCT OF TRIAL IN GENERAL, ¶18.1–31.
  - IV. RECEPTION OF EVIDENCE, ¶32–105.
    - (A) INTRODUCTION, OFFER, AND ADMISSION OF EVIDENCE IN GENERAL, ¶32–58.
    - (B) ORDER OF PROOF, REBUTTAL, AND REOPENING CASE, ¶59–72.
    - (C) OBJECTIONS, MOTIONS TO STRIKE OUT, AND EXCEPTIONS, ¶73–105.
  - V. ARGUMENTS AND CONDUCT OF COUNSEL, ¶106–133.
  - VI. TAKING CASE OR QUESTION FROM JURY, ¶134–181.
    - (A) QUESTIONS OF LAW OR OF FACT IN GENERAL, ¶134–149.
    - (B) DEMURRER TO EVIDENCE, ¶150–158.
    - (C) DISMISSAL OR NONSUIT, ¶159–166.
    - (D) DIRECTION OF VERDICT, ¶167–181.
  - VII. INSTRUCTIONS TO JURY, ¶182–296.
    - (A) PROVINCE OF COURT AND JURY IN GENERAL, ¶182–201.
    - (B) NECESSITY AND SUBJECT-MATTER, ¶202–219.
    - (C) FORM, REQUISITES, AND SUFFICIENCY, ¶220–247.
    - (D) APPLICABILITY TO PLEADINGS AND EVIDENCE, ¶248–254.
    - (E) REQUESTS OR PRAYERS, ¶255–269.

VII. INSTRUCTIONS TO JURY—Cont'd  
(F) OBJECTIONS AND EXCEPTIONS, ¶270–284.

(G) CONSTRUCTION AND OPERATION, ¶285–296.

VIII. CUSTODY, CONDUCT, AND DELIBERATIONS OF JURY, ¶297–317.

IX. VERDICT, ¶318–366.

(A) GENERAL VERDICT, ¶318–345.

(B) SPECIAL INTERROGATORIES AND FINDINGS, ¶346–366.

X. TRIAL BY COURT, ¶367–405.

(A) HEARING AND DETERMINATION OF CAUSE, ¶367–387.

(B) FINDINGS OF FACT AND CONCLUSIONS OF LAW, ¶388–405.

XI. WAIVER AND CORRECTION OF IRREGULARITIES AND ERRORS, ¶406–427.

**I. NOTICE OF TRIAL AND PRELIMINARY PROCEEDINGS.**

- 1. Condition of cause in general.
- 2. Trial of causes together.
- 3. Separate trials in same cause.
  - (1). In general.
  - (2). Discretion of court.
  - (3). Counterclaims and cross-claims.
  - (4). Particular parties, separate trial as to.
  - (5). Particular issues, separate trial of.
  - (5.1). — In general.
  - (6). — Legal and equitable issues.
  - (7). Request or application.
- 4. Order of trial of separate issues.
- 5. Time or term of court for trial.
- 6. Notice of trial.
  - (1). In general.
  - (2). New notice after amendment.
  - (3). Effect of continuance or adjournment.
- 7. Note of issue.

**II. DOCKETS, LISTS, AND CALENDARS.**

- 9. Trial dockets or calendars in general.
  - (1). In general.  
*See also PRETRIAL PROCEDURE* ¶741–753.
  - (2). Notice of setting cause for trial.
- 10. Causes for particular dockets.
- 11. Transfer of causes.
  - (1). In general.

**388. TRIAL****II. DOCKETS, LISTS, AND  
CALENDARS.(Cont'd)**

- (2). Transfer from law to equity docket.
- (3). Transfer from equity to law docket.
- 12. Short-cause calendars.
  - (1). In general.
  - (2). Striking cause from short-cause calendar.
- 13. Preferred causes.
  - (1). In general; discretion of court.
  - (2). Nature of action.
  - (3). Nature or circumstances of parties.
    - (3.1). — In general.
  - (4). — Age or disability; financial condition.
  - (5). Causes over which preference may be had.
  - (6). Proceedings to procure preference in general.
  - (7). Time for application or notice; laches.
  - (8). Notice.
- 14. Striking cause from docket.
- 15. Order of calling and hearing causes.
- 16. Holding or passing cause pending engagement of counsel.
- 17. Disposition of causes passed or continued.

**III. COURSE AND CONDUCT  
OF TRIAL IN GENERAL.**

- 18.1. In general.
- 18.2. Nature and purpose of trial in general.
- 18.3. Role and obligations of judge.
- 18.4. — In general.
- 18.5. — Discretion.
- 18.6. — Order, decorum, and efficiency of proceedings.
- 18.7. Fair and impartial trial in general.
- 18.8. Requisites of fair trial.
- 18.9. Time limitations.
- 18.10. Management of courtroom in general.
- 18.11. Seating in court.
- 18.12. — In general.
- 18.13. — Counsel table.
- 18.14. Security.
- 18.15. Conduct of or affecting witnesses.

**III. COURSE AND CONDUCT OF  
TRIAL IN GENERAL.(Cont'd)**

- 18.16. — In general.
- 18.17. — Appearance and attire.
- 18.18. — Conduct of witness.
- 18.19. — Restraint of witness.
- 18.20. — Protection of witness.
- 18.21. Conduct of or affecting parties.
- 18.22. — In general.
- 18.23. — Appearance and attire.
- 18.24. — Conduct of party.
- 18.25. — Protection of party.
- 18.26. Experts and others appointed to assist court.
- 18.27. Ex parte communications.
- 18.28. — In general.
- 18.29. — Particular cases.
- 18.30. Mistrial.
- 18.31. — In general.
- 18.32. — Discretion of court.
- 18.33. — Grounds in general.
- 18.34. — Particular cases.
  - (1). In general.
  - (2). Evidentiary matters.
  - (3). Witnesses.
  - (4). — In general.
  - (5). — Examination.
  - (6). — Cross-examination, impeachment, and bolstering.
  - (7). — Unresponsive, unsolicited, and unexpected testimony.
  - (8). — Absence of witness.
  - (9). Events causing sympathy or prejudice, in general.
  - (10). — In general.
  - (11). — Conduct of witness causing sympathy or prejudice.
  - (12). — Conduct of party or persons associated with party causing sympathy or prejudice.
- 18.35. — Necessity and sufficiency of motion or request; time for motion.
- 18.36. Gag orders and similar restraints.
- 19. Presence of judge.
- 20. Publicity of proceedings.
- 21. Presence of parties and counsel.
- 22. Appointment and services of interpreter.
- 23. Appointment and services of stenographer.
- 25. Right to open and close.

**388. TRIAL****III. COURSE AND CONDUCT OF TRIAL IN GENERAL.(Cont'd)**

- (1). In general.
- (2). Discretion of court.
- (3). Party introducing no evidence.
- (4). Affirmative of issues in general.
- (5). Necessity of introducing evidence in order to prevail.
- (6). Several pleas or issues.
- (7). Admissions and pleas in confession and avoidance.
- (7.1). — In general.
- (8). — Necessity.
- (9). — Sufficiency of admission.
- (10). — Mode and form of admissions.
- (11). — Time for making or filing admission.
- (12). — Sufficiency of plea in avoidance.
- (13). — Set-off and counterclaim.
- (14). — Plea of payment.
- (15). Condition of cause after close of evidence.
- (16). Claim of right and determination thereof.
- 26. Adjournments pending trial.
- 27. Experiments and tests.
- 28. View and inspection.
  - (1). In general.
  - (2). Discretion of court.
  - (3). Inspection of objects.
- 29. Remarks of judge.
  - (1). In general.
  - (2). Comments on evidence.
  - (3). Examination, credibility, and impeachment of witnesses.
- 29.1. Conduct of judge.
- 30. Presence and conduct of bystanders.
- 31. Objections and exceptions.

**IV. RECEPTION OF EVIDENCE.****(A) INTRODUCTION, OFFER, AND ADMISSION OF EVIDENCE IN GENERAL.**

- 32. Necessity and scope of proof.
- 33. — In general.
- 34. — Matters of record in cause.
- 35. — Stipulations and agreed statements.
- 36. — Matters not controverted at trial.

**IV. RECEPTION OF EVIDENCE.(Cont'd)**

- 37. — Estoppel and waiver.
- 38. Right of party to confront witnesses.
- 39. Introduction of documentary and demonstrative evidence.
- 40. Reading depositions.
- 41. Separation and exclusion of witnesses.
  - (1). In general.
  - (2). Excusing witnesses from rule.
  - (3). Parties.
  - (4). Competency of witness not placed under rule.
  - (5). Violation of rule.
- 42. Compelling calling of witness.
- 43. Admission of evidence in general.
- 44. Offer of proof.
- 45. — In general; necessity and sufficiency.
  - (1). In general.
  - (2). Necessity of presence of witness or documents or other showing of good faith of offer.
  - (3). Statement or disclosure of evidence expected.
- 46. — Showing grounds or purpose of admission.
  - (1). In general.
  - (2). Showing relevancy, competency, and materiality.
- 47. — Offer following objection and ruling thereon.
  - (.5). In general.
  - (1). Offer following exclusion.
  - (2). Renewal of offer.
- 48. — Evidence inadmissible in part or for particular purpose.
- 49. — Rulings on offers.
- 50. Presence of jury during argument as to admission.
- 51. Provisional or conditional admission.
- 52. Effect of admission of evidence.
- 53. — In general.
- 54. — Restriction to special purpose.
  - (1). In general.
  - (2). Coparties.
  - (3). Impeaching evidence.
- 55. Exclusion of improper evidence.
- 56. Cumulative evidence in general.

**388. TRIAL****IV. RECEPTION OF EVIDENCE.(Cont'd)**

- 57. Number of witnesses.
- 58. Withdrawal of evidence.

**(B) ORDER OF PROOF, REBUTTAL, AND REOPENING CASE.**

- 59. Order of admission in general.
  - (1). In general.
  - (2). Discretion of court.
- 60. Evidence dependent on preliminary proof.
  - (1). In general.
  - (2). Proof of agency or partnership.
- 61. Scope of evidence in chief.
- 62. Evidence in rebuttal.
  - (1). In general; grounds for admission.
  - (2). Scope of evidence in rebuttal.
  - (3). Discretion of court.
- 63. Admission in rebuttal of evidence proper in chief.
  - (1). In general.
  - (2). Discretion of court.
  - (3). Cumulative or corroborative evidence.
- 64. Evidence in reply or surrebuttal.
- 65. Reopening case for further evidence.
- 66. — In general.
- 67. — After party offering evidence has rested.
- 68. — After close of evidence.
  - (1). In general.
  - (2). During argument.
  - (3). After close of argument.
- 69. — After demurrer to evidence or motion for nonsuit or verdict.
- 70. — After submission of case to jury.
- 71. — After verdict.
- 72. — Proceedings after reopening case.

**(C) OBJECTIONS, MOTIONS TO STRIKE OUT, AND EXCEPTIONS.**

- 73. Right to object.
- 74. — In general.
- 75. — Estoppel or waiver.
- 76. Time for objection.
- 77. Mode of making objection.
- 78. — In general.
- 79. — Repetition.
- 80. Sufficiency and scope of objection.

**IV. RECEPTION OF EVIDENCE.(Cont'd)**

- 81. — In general.
- 82. — General or specific.
- 83. — Statement of grounds.
  - (1). In general.
  - (2). Incompetency, irrelevancy, and immateriality.
  - (3). Repetition of statement of grounds.
- 84. — Scope and questions raised.
  - (1). In general.
  - (2). Expert or opinion evidence.
  - (3). Documentary evidence.
  - (3.1). — In general.
  - (4). — General objection.
  - (5). Parol and secondary evidence.
  - (6). Objection to question as extending to answer.
- 85. — Evidence admissible in part.
- 86. — Evidence admissible for special purpose.
- 87. — Evidence admissible for or against part of several coparties.
- 88. Motion to strike out.
- 89. — In general.
- 90. — Necessity for motion.
- 91. — Necessity of previous objection.
- 92. — Time for motion.
- 93. — Form and requisites.
- 94. — Statement of grounds.
- 95. — Scope and questions raised.
- 96. — Evidence admissible in part.
- 97. — Evidence elicited by party moving to strike out.
- 98. Ruling or order.
- 99. Exceptions.
- 100. — In general.
- 101. — Time for exception.
- 102. — Taking and noting.
- 103. — Sufficiency and scope.
- 104. — Operation and effect.
- 105. Effect of failure to object or except.
  - (1). In general.
  - (2). Nature of evidence in general.
  - (3). Expert and other opinion evidence.
  - (4). Documentary evidence.
  - (5). Parol and secondary evidence.



**388. TRIAL****IV. RECEPTION OF EVIDENCE.(Cont'd)**

- (6). Excluding or striking out on court's own motion.

**V. ARGUMENTS AND CONDUCT OF COUNSEL.**

- 106. Control by court in general.
- 107. Representation of party by counsel.
- 108. Right to address jury.
- 108.5. Proceedings for impaneling jury.
- 109. Scope and effect of opening statement.
- 110. Presentation of evidence.
- 111. Scope and effect of summing up.
- 112. Limiting scope or time of argument.
- 113. Statements as to facts, comments, and arguments.
- 114. — In general.
- 115. — Stating or reading and commenting on proceedings in cause.
  - (1). In general.
  - (2). Special interrogatories.
  - (3). Pleadings and proceedings relating thereto.
  - (4). Stating, reading, or replaying evidence.
  - (5). Proceedings at former trial or on appeal.
- 116. — Exhibits and illustrations.
- 117. — Authorities on subject involved.
- 118. — Arguing or reading law to jury.
- 119. — Matters not within issues.
- 120. — Matters not sustained by evidence.
  - (1). In general.
  - (2). Nature of remark or comment.
  - (3). Evidence rejected or excluded.
- 121. — Comments on evidence or witnesses.
  - (1). In general.
  - (2). Deductions or inferences from evidence.
  - (3). Weight and sufficiency of evidence.
  - (4). Remarks reflecting on credibility of witnesses.
  - (5). Evidence improperly admitted.
- 122. — Comments on failure to produce evidence or call witness.
- 123. — Comments on failure of party to testify.

**V. ARGUMENTS AND CONDUCT OF COUNSEL.(Cont'd)**

- 124. — Comments on character or conduct of party.
- 125. — Appeals to sympathy or prejudice.
  - (1). In general.
  - (2). Appeals to race or local prejudice.
  - (3). Appeals to prejudice against corporations.
  - (4). Reference to wealth or poverty of parties.
  - (5). Reference to forlorn or helpless condition of parties.
- 126. — Abusive language.
- 127. — Reference to protection of party by insurance or other indemnity.
- 128. — Instructions to jury as to their duties.
- 129. Retaliatory statements and remarks.
- 130. Evidence to rebut statements.
- 131. Objections and exceptions.
  - (5). In general.
  - (1). Necessity.
  - (2). Time for taking.
  - (3). Requisites and sufficiency.
- 132. Withdrawal or correction of objectionable matter.
- 133. Action of court.
  - 133.1. — In general; duty of court.
  - 133.2. — Sufficiency of action in general.
  - 133.3. — Sustaining objection.
  - 133.4. — Reprimanding counsel and directing them to desist from improper argument.
  - 133.5. — Stating that remarks are improper.
  - 133.6. — Instruction or admonition to jury.
    - (1). In general.
    - (2). Presentation of evidence.
    - (3). Statements as to facts, comments, and argument.
    - (3.1). — In general.
    - (4). — Particular statements or remarks.
    - (5). — Matters outside issues or evidence.
    - (6). — Comments on evidence or witnesses or on failure to produce evidence.

**388. TRIAL****V. ARGUMENTS AND CONDUCT  
OF COUNSEL.(Cont'd)**

- (7). — Appeals to sympathy or prejudice.
- (8). — Reference to insurance or indemnity.

**VI. TAKING CASE OR QUESTION  
FROM JURY.****(A) QUESTIONS OF LAW OR  
OF FACT IN GENERAL.**

- 134. Functions as judges of law and fact in general.
- 136. Questions of law or fact in general.
  - (1). In general.
  - (2). Variance.
  - (3). Construction of writings.
  - (4). Foreign laws.
- 137. Mixed questions of law and fact.
- 138. Preliminary or introductory questions of fact.
- 139.1. Evidence.
  - (.5). In general.
    - (1). Province of court and jury.
      - (1.1). — In general.
    - (2). — Probative effect in general.
    - (3). — Weight of evidence.
    - (4). — Sufficiency of evidence.
    - (5). Submission to or withdrawal from jury.
      - (5.1). — In general.
    - (6). — “Some”, “slight”, or “any” evidence.
    - (7). — “No” evidence; total failure of proof.
    - (8). — Scintilla of evidence.
    - (9). — Substantial evidence.
    - (10). — Weight and preponderance of evidence.
    - (11). — Effect of burden of proof.
    - (12). — Speculation or conjecture; choice of probabilities or theories.
    - (13). — Prima facie case.
    - (14). — Sufficiency to present issue of fact.
    - (15). — Sufficiency to warrant recovery, or to establish cause of action or defense.

**VI. TAKING CASE OR QUESTION  
FROM JURY.(Cont'd)**

- (16). — Sufficiency to support verdict, finding, or judgment.
- (17). — Insufficiency to support other verdict; conclusive evidence.
- (18). — Inherently improbable or incredible evidence; physical facts.
- (19). — Positive or negative evidence.
- (20). — Circumstantial evidence; presumptions.
- (21). Evidence erroneously admitted.
- (22). Evidence to support cause of action against coparties.
- (23). Evidence to support part of issues.
- 140. Credibility of witnesses.
  - (1). In general.
  - (2). Parties and persons interested.
- 141. Uncontroverted facts or evidence.
- 142. Inferences from evidence.
- 143. Conflicting evidence.
- 144. Amount of recovery.
- 145. Withdrawal of particular counts or issues.
- 146. Withdrawal of juror.
- 147. Reservation of questions of law.
- 148. Requests for submission of issues to jury.
- 149. Effect of failure to question sufficiency of evidence.
- (B) DEMURRER TO EVIDENCE.**
- 150. Nature and grounds in general.
- 151. Power of court.
- 152. Right to demur.
- 153. Time for demurrer.
- 154. Form and requisites and joinder in demurrer.
- 155. Operation and effect.
- 156. Hearing and determination.
  - (1). In general.
  - (2). Consideration of evidence in general.
  - (3). Admissions and inferences.
- 157. Exceptions to rulings.

**388. TRIAL****VI. TAKING CASE OR QUESTION  
FROM JURY.(Cont'd)**

158. Motion to strike out or exclude evidence.

**(C) DISMISSAL OR NONSUIT.**

159. Nature and grounds in general.  
160. Power of court.  
161. Right to move.  
162. Time for motion.  
163. Form and requisites of motion.  
164. Operation and effect of motion.  
165. Hearing and determination of motion.  
166. Exceptions to rulings.

**(D) DIRECTION OF VERDICT.**

167. Nature and grounds.  
168. — In general.  
169. — Verdict for defendant.  
170. — Verdict for plaintiff.  
171. Power of court.  
172. Right to move.  
173. Time for motion.  
174. Form and requisites of motion or request.  
175. Operation and effect of motion or request.  
176. — In general.  
177. — By both parties.  
178. Hearing and determination.  
179. Refusal of juror to obey direction.  
180. Discharge of jury and decision by court.  
181. Exceptions to rulings.

**VII. INSTRUCTIONS TO JURY.****(A) PROVINCE OF COURT AND JURY IN GENERAL.**

182. Authority to instruct jury in general.  
183. Constitutional and statutory provisions.  
184. Nature and scope of issues.  
185. Statement and review of evidence by judge.  
186. Comments by judge on evidence in general.  
187. Credibility of witnesses.  
(1). In general.  
(2). Corroboration, contradiction, and inconsistent statements.  
(3). Interest of witness.  
(4). Character and conduct of witness.

**VII. INSTRUCTIONS TO JURY.(Cont'd)**

188. Inferences from evidence.  
189. Hypothetical statements by judge.  
190. Assumptions by judge as to facts.  
191. — In general.  
(1). In general.  
(2). Nature of action or issue in general.  
(3). Contracts and actions relating thereto.  
(4). Actions relating to property.  
(5). Actions for torts in general.  
(6). Negligence in general.  
(7). Personal injuries in general.  
(8). Personal injuries in operation of railroads in general.  
(9). Injuries to passengers.  
(10). Injuries to servants.  
(11). Damages and amount of recovery.  
192. — Uncontroverted facts or evidence.  
193. Opinion or belief of judge as to facts.  
(1). In general.  
(2). Nature of action or issue in general.  
(3). Negligence.  
194. Weight and sufficiency of evidence.  
(1). In general.  
(2). Nature of instruction in general.  
(3). Positive and negative testimony.  
(4). Admissions.  
(5). Opinion evidence.  
(6). Conflicting evidence.  
(7). Uncontroverted evidence.  
(8). Failure or absence of proof.  
(9). Nature of action or issue in general.  
(10). Actions relating to property.  
(11). Contracts and actions relating thereto in general.  
(12). Bills and notes.  
(13). Sales.  
(14). Torts in general.  
(15). Negligence in general.  
(16). Personal injuries in general.  
(17). Personal injuries in operation of railroads in general.  
(18). Injuries to passengers.  
(19). Injuries to servants.

**388. TRIAL****VII. INSTRUCTIONS TO JURY.(Cont'd)**

- (20). Damages or amount of recovery.
- 195. Preponderance of evidence.
- 196. Comments by judge on conduct or merits of cause or parties.
- 197. Determination of questions of law.
- 197.1. — In general.
- 198. — Duty of judge.
- 199. — Submission to jury.
- 200. Application of law to facts.
- 201. Instructions as to duties of jury.

**(B) NECESSITY AND SUBJECT-MATTER.**

- 202. Duty of judge in general.
- 203. Issues and theories of case in general.
  - (1). In general.
  - (2). Duty to submit all the issues.
  - (3). Affirmative and negative of issues.
  - (4). Issues withdrawn.
- 204. Statement and review of evidence in general.
- 205. Presumptions and burden of proof.
- 206. Determination of weight and sufficiency of evidence in general.
- 207. Purpose and effect of evidence.
- 208. Exclusion of evidence from consideration.
- 209. Circumstantial evidence.
- 210. Credibility of witnesses.
  - (1). In general.
  - (2). Falsity of testimony in general.
  - (3). Inconsistent and conflicting statements.
  - (4). Interest of witness.
- 211. Failure of party to testify or to call witness or produce evidence.
- 212. Preponderance of evidence.
- 213. Matters of law in general.
- 214. Law applicable to particular issues or theories.
- 215. Submission to jury for special findings.
- 216. Determination of amount of recovery.
- 217. Instructions as to duties of jury.
- 218. Influence of arguments of counsel.
- 219. Definition or explanation of terms.

**(C) FORM, REQUISITES, AND SUFFICIENCY.**

- 220. Time for giving instructions.
- 221. Presence of parties and counsel.

**VII. INSTRUCTIONS TO JURY.(Cont'd)**

- 222. Written instructions.
- 222.1. — In general.
- 223. — Necessity of writing in general, and submission to counsel.
- 224. — Requests for reduction to writing.
- 225. — Compliance with requirement as to writing in general.
  - (1). In general.
  - (2). Signing.
- 226. — Reducing oral instructions to writing.
- 227. — Reading or delivery to jury.
- 228. Form and language.
  - (.5). In general.
  - (1). Form and arrangement.
  - (2). Reference to other instructions.
  - (3). Language.
  - (4). Certainty, definiteness, and particularity.
- 229. Repetition.
- 230. Limiting number of instructions.
- 231. Sufficiency as to subject-matter.
- 232. — In general.
  - (1). In general.
  - (2). Submission to jury for special findings.
  - (3). Instructions as to duties of jury.
  - (4). Influence of argument of counsel.
  - (5). Definition of terms.
- 233. — Statement of issues.
  - (1). In general.
  - (2). Reading or use of pleadings.
  - (3). Referring jury to pleadings.
  - (4). Conflicting issues and grounds of verdict.
- 234. — Evidence and matters of fact in general.
  - (1). In general.
  - (2). Statement or summarizing facts or evidence.
  - (3). Directing verdict if the jury believes the evidence.
  - (4). Directing verdict if specified facts are proved.
  - (5). Restricting jury to evidence.
  - (6). Misstatements.
  - (7). Presumptions and burden of proof.

**388. TRIAL****VII. INSTRUCTIONS TO JURY.(Cont'd)**

- (8). Failure of party to testify or to call witness or produce evidence.
- (9). Exclusion of evidence from consideration.
- 235. — Weight and effect of evidence.
  - (1). In general.
  - (2). Consideration of probabilities and inferences from evidence.
  - (3). Conflicting evidence.
  - (4). Circumstantial evidence.
  - (5). Positive and negative testimony.
  - (6). Admissions.
  - (7). Testimony of experts and other opinion evidence.
- 236. — Credibility of witnesses.
  - (1). In general.
  - (2). Falsus in uno falsus in omnibus.
  - (3). Interest of witness.
- 237. — Preponderance of evidence.
  - (1). In general.
  - (2). Qualifications of the word “preponderance.”.
  - (3). Degree of proof required in general.
  - (4). What constitutes and determination of preponderance.
  - (5). Weight with reference to number of witnesses.
  - (6). Requiring matters to be proved to the satisfaction of the jury.
- 238. — Matters of law.
- 239. — Amount of recovery.
- 240. Argumentative instructions.
- 241. Reading or quoting statutes, ordinances, authorities, or reported cases.
- 242. Confused or misleading instructions.
- 243. Inconsistent or contradictory instructions.
- 244. Undue prominence of particular matters.
  - (1). In general.
  - (2). Evidence and matters of fact in general.
  - (3). Nature of action or issue in general.
  - (4). Negligence and personal injuries.
  - (5). Credibility of witnesses.
  - (6). Matters of law and amount of recovery.
- 245. Appeals to sympathy or prejudice.

**VII. INSTRUCTIONS TO JURY.(Cont'd)**

- 246. Instructions correcting previous erroneous instructions and omissions.
- 247. Withdrawal of instructions or remarks.
- (D) APPLICABILITY TO PLEADINGS AND EVIDENCE.**
- 248. Abstract instructions in general.
- 249. Application of instructions to case.
- 250. — In general.
- 251. — Pleadings and issues.
  - (1). In general.
  - (2). Nature of action or issue in general.
  - (3). Actions relating to property and for injuries thereto.
  - (4). Contracts and actions relating thereto in general.
  - (5). Contracts of sale and actions relating thereto.
  - (6). Actions on insurance contracts, policies, or certificates.
  - (7). Actions on notes.
  - (8). Actions for personal injuries.
  - (9). Amount of recovery.
- 252. — Facts and evidence.
  - (1). In general.
  - (2). Sufficiency of evidence to warrant instruction.
  - (3). Evidence excluded or withdrawn or improperly admitted.
  - (4). Nature of action or issue in general.
  - (5). Actions relating to property in general.
  - (6). Actions for torts in general.
  - (7). Negligence in general.
  - (8). Personal injuries in general.
  - (9). Injuries in operation of railroads in general.
  - (10). Injuries to passengers.
  - (11). Injuries to servants.
  - (12). Contracts and actions relating thereto in general.
  - (13). Contracts of sale and actions relating thereto.
  - (14). Actions on insurance policies.
  - (15). Bills and notes.
  - (16). Actions for personal services and commissions.

**388. TRIAL****VII. INSTRUCTIONS TO JURY.(Cont'd)**

- (17). Fraud, mistake, duress, and undue influence.
- (18). Will contests.
- (19). Tender, payment, or release.
- (20). Extent of injury and amount of recovery.
- (21). Credibility of witnesses and weight of opinion evidence.
- (22). Failure of party to testify or call witness or produce evidence.
- (23). Several counts or parties.
- 253. Instructions excluding or ignoring issues, defenses, or evidence.
  - (.5). In general.
    - (1). Issues and defenses.
      - (1.1). — In general.
    - (2). — Abandonment of issue.
    - (3). — Nature of action or issue in general.
    - (4). — Actions for personal injuries.
    - (5). — Contracts and actions relating thereto.
    - (6). Excluding or ignoring facts or evidence.
      - (6.1). — In general.
    - (7). — Hypothetical statements.
    - (8). — Nature of action or issue in general.
    - (9). — Actions for personal injuries.
    - (10). — Contracts and actions relating thereto.
    - (11). Credibility of witnesses.
- 254. Instructions as to application of personal knowledge of jurors.

**(E) REQUESTS OR PRAYERS.**

- 255. Necessity in general.
  - (1). In general.
  - (2). Issues or theories of case.
  - (3). Evidence and matters of fact in general.
  - (4). Purpose and effect of evidence.
  - (5). Exclusion of evidence from consideration.
  - (6). Arguments and conduct of counsel.

**VII. INSTRUCTIONS TO JURY.(Cont'd)**

- (7). Nature of action or issue in general.
- (8). Actions relating to property in general.
- (9). Actions for torts in general.
- (10). Actions for negligence in general.
- (11). Actions for personal injuries.
- (12). Contracts and actions relating thereto.
- (13). Definition or explanation of terms.
- (14). Damages and amount of recovery.
- (15). Credibility of witnesses.
- 256. Further or more specific instructions.
  - (1). In general.
  - (2). Erroneous or misleading instructions.
  - (3). Issues or theories of case.
  - (4). Evidence and matters of fact in general.
  - (5). Purpose and effect of evidence.
  - (6). Nature of action or issue in general.
  - (7). Actions relating to property in general.
  - (8). Actions for torts in general.
  - (9). Actions for negligence in general.
  - (10). Actions for personal injuries.
  - (11). Contracts and actions relating thereto.
  - (12). Definition or explanation of terms.
  - (13). Damages and amount of recovery.
  - (14). Credibility of witnesses.
- 257. Time for asking instructions.
- 258. Form and requisites in general.
  - (1). In general.
  - (2). Number and length.
- 259. Written requests or prayers.
  - (1). In general.
  - (2). Numbering and signing.
- 260. Instructions already given.
  - (1). In general.
  - (2). Issues.
  - (3). Evidence and matters of fact.
  - (4). Credibility of witnesses.

**388. TRIAL****VII. INSTRUCTIONS TO JURY.(Cont'd)**

- (5). Nature of action or issue in general.
- (6). Actions for torts in general.
- (7). Actions for negligence in general.
- (8). Personal injuries.
- (9). Contracts and actions relating thereto.
- (10). Amount of recovery.
- 261. Duty to give requested instruction; erroneous requests.
- 262. Inconsistent requests.
- 263. Presentation and allowance in general.
- 264. Withdrawal of requests.
- 265. Argument of requests.
- 266. Manner of giving instructions asked.
- 267. Modification or substitution by court.
  - (1). In general.
  - (2). Erroneous instructions.
  - (3). Nature and subject-matter of modification.
  - (4). Substitution of another instruction.
- 268. Refusal of requests.
- 269. Noting disposition of requests.

**(F) OBJECTIONS AND EXCEPTIONS.**

- 270. Right to object or except.
- 271. — In general.
- 272. — Estoppel or waiver.
- 273. Time for objection or exception.
- 274. Mode of making objection.
- 275. Taking and noting exception.
- 276. Sufficiency and scope of objections or exceptions to instructions given.
- 277. — In general.
- 278. — General or specific.
- 279. — Statement of grounds of objection.
- 280. — Scope and questions raised.
- 281. — Instructions correct in part.
- 282. Sufficiency and scope of exceptions to failure or refusal to instruct.
- 283. Operation and effect of objections or exceptions.
- 284. Effect of failure to object or except.

**(G) CONSTRUCTION AND OPERATION.**

- 285. Rules of construction in general.
- 286. Construction of particular instructions.

**VII. INSTRUCTIONS TO JURY.(Cont'd)**

- 287. Inadvertent errors or omissions.
- 295. Construction and effect of charge as a whole.
  - (1). In general.
  - (2). Errors in general.
  - (3). Omissions in general.
  - (4). Nature of error or omission in general.
  - (5). Issues and theories of case in general.
  - (6). Negligence in general.
  - (7). Contributory negligence and assumption of risk.
  - (8). Evidence and matters of fact in general.
  - (9). Weight and effect of evidence.
  - (10). Invasion of province of jury.
  - (11). Measure of damages or amount of recovery.
  - (12). Definition or explanation of terms.
- 296. Error in instructions cured by withdrawal or giving other instructions.
  - (1). In general.
  - (2). Issues and theories of case in general.
  - (3). Negligence in general.
  - (4). Contributory negligence.
  - (6). Assumption of risk.
  - (7). Evidence and matters of fact in general.
  - (8). Weight and effect of evidence in general.
  - (9). Invasion of province of jury.
  - (10). Credibility of witnesses.
  - (11). Measure of damages or amount of recovery.
  - (12). Definition or explanation of terms.
  - (13). Withdrawal or correction.

**VIII. CUSTODY, CONDUCT, AND DELIBERATIONS OF JURY.**

- 297. Attendance and custody in general.
- 298. Officer in charge.
- 299. — In general.
- 300. — Oath.
- 301. Admonition to jury or officer.
- 302. Presence during proceedings.

**388. TRIAL****VIII. CUSTODY, CONDUCT,  
AND DELIBERATIONS  
OF JURY.(Cont'd)**

- 303. Separation.
- 304. Misconduct of jurors.
- 305. Misconduct of others affecting jurors.
- 306. Deliberations in general.
- 307. Taking papers or articles to jury room.
  - (1). In general.
  - (2). Pleadings and other papers part of record.
  - (3). Documentary evidence and depositions.
  - (4). Instructions.
- 308. Reading minutes of or restating testimony.
- 309. Consideration of view or inspection.
- 310. Experiments by jurors.
- 311. Application of personal knowledge of jurors.
- 312. Instructions after submission of cause.
  - (.5). In general.
  - (1). Authority and duty to instruct.
  - (2). Requisites and sufficiency of instructions.
  - (3). Presence of parties and counsel.
- 313. Communications between judge and jury.
- 314. Urging or coercing agreement.
  - (1). In general.
  - (2). Conduct of officer in charge.
- 315. Manner of arriving at verdict.
- 316. Discharge for failure to agree.
- 317. Objections and exceptions.

**IX. VERDICT.****(A) GENERAL VERDICT.**

- 318. Necessity and sufficiency of general finding.
- 319. Verdict subject to opinion of court.
- 320. Preparation and formulation.
- 321. Rendition and reception.
- 321.5. Assent of required number of jurors.
- 322. Reduction of oral verdict to writing.
- 323. Signature.
- 324. Sealed verdict.
- 325. Polling jurors.
  - (1). In general.

**IX. VERDICT.(Cont'd)**

- (2). Disclosing grounds, intention, or manner of arriving at verdict.
- (3). Dissent or disagreement of jurors and resubmission of cause.
- 326. Form and language in general.
- 327. Designation of parties.
- 328. Severance as to parties.
- 329. Responsiveness to issues.
- 330. Several counts or issues.
  - (1). In general.
  - (2). Applicability and sufficiency of evidence.
  - (3). Defective, immaterial, and inconsistent counts and issues.
  - (4). Nature of counts or issues.
  - (5). Sustaining verdict on one count or as to part of issues.
- 331. Certainty in general.
- 332. Amount of recovery.
- 333. — In general.
- 334. — Interest.
- 335. Severance and apportionment of damages.
- 336. Surplusage.
- 337. Disregard of instructions.
- 338. Amendment or correction.
- 338.1. — In general.
- 339. — By jury.
  - (1). In general.
  - (2). Under advice, direction, or sanction of court.
  - (3). Remanding jury, with instructions.
  - (4). After sealing and recording verdict, and discharge or separation of jury.
- 340. — By court.
  - (1). In general.
  - (2). After discharge of jury.
  - (3). Designation of parties.
  - (4). Several counts or issues.
  - (5). Amount of recovery.
- 341. Venire de novo.
- 342. Entry and record.
- 343. Construction and operation.
- 344. Affidavits and evidence of jurors to sustain or impeach verdict.
- 345. Objections and exceptions.



**388. TRIAL****(B) SPECIAL INTERROGATORIES AND FINDINGS.**

- 346. Power of jury to find specially.
- 346.1. — In general.
- 347. — Special verdict.
- 348. — Special findings accompanying general verdict.
- 349. Power and duty of court to require special findings.
  - (1). In general.
  - (2). Discretion of court.
  - (3). Submission on court's own motion.
  - (4). Directing special verdict only.
- 350. Questions to be submitted.
- 350.1. — In general.
- 350.2. — Evidentiary and ultimate facts and conclusions of law in general.
- 350.3. — Nature of action or issue in general.
  - (1). In general.
  - (2). Property, conveyances, and incumbrances.
    - (2.1). — In general.
  - (3). — Trespass to try title.
  - (4). Torts in general.
  - (5). Personal injuries.
  - (6). Injuries to property.
  - (7). Automobile cases.
  - (8). Workers' compensation.
- 350.4. — Contracts, actions and issues relating to.
  - (1). In general.
  - (2). Contracts for sale.
  - (3). Insurance.
  - (4). Contracts for services; brokers.
- 350.5. — Proximate cause of injury, issues as to.
  - (1). In general.
  - (2). Personal injuries in general.
  - (3). Automobile cases.
  - (4). Employees' injuries; workers' compensation.
  - (5). Unavoidable accident.
- 350.6. — Negligence, issues as to.
  - (1). In general.
  - (2). Personal injuries in general.
  - (3). Automobile cases.
  - (4). Carriers; railroads.
  - (5). Explosives; fires.

**IX. VERDICT.(Cont'd)**

- (6). Employees' injuries.
- 350.7. — Contributory negligence, issues as to.
  - (1). In general.
  - (2). Personal injuries in general.
  - (3). Automobile cases.
    - (3.1). — In general.
  - (4). — Pedestrians.
  - (5). — Passengers, guests, or occupants.
  - (6). Railroad cases.
  - (7). Employees.
  - (8). Infants.
  - (9). Injury avoidable notwithstanding contributory negligence.
  - (10). Comparative negligence.
- 350.8. — Admitted or uncontroverted facts.
- 351. Requests for special findings or interrogatories.
  - 351.1. — In general; time for presenting.
  - 351.2. — Necessity and sufficiency of requests.
    - (5). In general.
    - (1). Necessity and burden of making request.
      - (1.1). — In general.
    - (2). — Particular actions or issues.
    - (3). Effect of failure to request; waiver.
    - (3.1). — In general.
    - (4). — Particular actions or issues.
    - (5). Findings by court on issues not submitted.
    - (6). Sufficiency of requests in general.
    - (7). Written requests.
    - (8). Separate requests.
    - (9). Effect of objection or exception to charge.
    - (10). Erroneous requests; modification or substitution by court.
  - 351.3. — Absolute or unconditional requests for special findings only.
  - 351.4. — Submission of interrogatories or proposed findings to counsel.
  - 351.5. — Questions already submitted.
    - (1). In general.
    - (2). Defensive issues.

**388. TRIAL****IX. VERDICT.(Cont'd)**

- (3). Nature of action or issue in general.
- (4). Contracts.
- (5). Negligence in general.
- (6). Automobile cases.
- (7). Carriers; railroads.
- (8). Employees' injuries; workers' compensation.
- 351.6. — Questions disposed of by general verdict.
- 352. Preparation and form of interrogatories or findings.
- 352.1. — In general.
  - (.5). In general.
  - (1). Form in general.
  - (2). Discretion of court.
  - (3). Nature of action or issue in general.
  - (4). Contracts.
  - (5). Negligence in general.
  - (6). Personal injuries in general.
  - (7). Automobile cases.
  - (8). Carriers; railroads.
  - (9). Employees' injuries; workers' compensation.
- 352.2. — Preparation by court or counsel.
- 352.3. — Number of interrogatories.
- 352.4. — Conformity to issues.
  - (1). In general.
  - (2). Nature of action or issue in general.
  - (3). Property, conveyances and incumbrances.
  - (4). Contracts.
  - (5). Negligence in general.
  - (6). Personal injuries in general.
  - (7). Automobile cases.
  - (8). Carriers; railroads.
  - (9). Employees' injuries; workers' compensation.
- 352.5. — Multifariousness or duplicity.
  - (1). In general.
  - (2). Grouping facts constituting single ultimate issue.
  - (3). Nature of action or issue in general.
  - (4). Contracts.
  - (5). Negligence and personal injuries in general.

**IX. VERDICT.(Cont'd)**

- (6). Automobile cases.
- (7). Carriers; railroads.
- (8). Employees' injuries; workers' compensation.
- 352.6. — Leading or suggestive interrogatories.
- 352.7. — Submission of interrogatories.
- 352.8. — Authentication or signature of findings.
- 352.9. — Burden of proof.
- 352.10. — Interrogatories assuming facts or on weight of evidence.
- 352.11. — Affirmative or negative form.
- 352.12. — Conclusions, generalities and questions of law.
- 352.13. — Alternatives.
- 352.14. — Opposite or conflicting issues.
- 352.15. — Uncertain, ambiguous and unexplained issues.
- 352.16. — Misleading and confusing issues.
- 352.17. — Informing jury as to effect of answers.
- 352.18. — Completeness and conclusiveness.
- 352.19. — Reference to pleadings.
- 352.20. — Dependency on other issues.
- 352.21. — Repetition and undue emphasis.
- 352.50. Assent of required number of jurors.
- 353. Amendment or modification of interrogatories.
- 354. Withdrawal of interrogatories.
- 355. Sufficiency of verdict or findings in general.
  - (1). In general.
  - (2). Definiteness and certainty.
  - (3). Ultimate and evidentiary facts and conclusions.
- 356. Failure to answer interrogatories or make findings.
  - (1). In general.
  - (2). Inferences from facts found and reference to pleadings or evidence.
  - (3). Nature of action or issue.
  - (4). Issues not supported by pleadings and evidence.
  - (5). Immaterial, inconclusive, and uncontroverted facts or issues.

**388. TRIAL****IX. VERDICT.(Cont'd)**

- (6). Adverse or negative findings and disagreement by jury.
- (7). Motions and duty of court to require proper answer or findings.
- 357. Responsiveness of findings.
- 358. Inconsistent findings.
- 359. Findings inconsistent with general verdict.
  - (1). In general.
  - (2). Remedies and proceedings to determine consistency in general.
- 360. Surplusage.
- 361. Defects and errors.
- 362. Amendment or correction of findings.
- 363. Venire de novo.
  - (1). In general.
  - (2). Grounds.
- 365. Construction and operation.
- 365.1. — In general.
  - (1). Construction and operation in general.
  - (2). Liberal or strict construction.
  - (3). Construction in connection with other matters.
  - (4). Nature of action or issue in general.
  - (5). Contracts.
  - (6). Negligence and personal injuries in general.
  - (7). Automobile cases.
  - (8). Carriers; railroads.
- 365.2. — Construction as a whole.
- 365.3. — Effect as evidence and conclusiveness.
- 365.4. — Effect as general verdict or finding.
- 366. Objections and exceptions.

**X. TRIAL BY COURT.****(A) HEARING AND DETERMINATION OF CAUSE.**

- 367. Power and duty of court in general.
- 368. Submission of cause on stipulation or agreed statement.
- 369. Trial of special issues by jury.
- 370. — In general.
  - (1). In general.
  - (2). Authority and discretion of court in general.

**X. TRIAL BY COURT.(Cont'd)**

- (3). Issues to be submitted.
- 371. — Framing and settlement of issues.
- 373. — Instructions.
- 374. — Verdict.
  - (1). In general.
  - (2). Conclusiveness.
- 375. View or inspection by judge.
- 376. Reception of evidence.
- 377. — In general.
  - (1). In general.
  - (2). Reception after submission of cause.
- 378. — Objections and exceptions.
- 379. — Effect of error in admission of evidence.
- 380. — Effect of error in exclusion of evidence.
- 381. Rulings on weight and sufficiency of evidence.
- 382. — In general.
- 383. — Demurrer to evidence.
- 384. — Dismissal or nonsuit.
- 385. — Objections and exceptions.
- 386. Declarations of law.
  - (1). In general.
  - (2). Necessity.
  - (3). Applicability to pleadings and evidence.
  - (4). Requests of parties and rulings thereon.
- 387. Decision.
  - (1). In general.
  - (2). Time for rendition and filing.
  - (3). Duty to determine all the issues.

**(B) FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

- 388. Duty to make in general.
  - (1). In general.
  - (2). Actions and proceedings in which necessary.
  - (3). Dismissal or nonsuit.
  - (4). Matters admitted by pleading or statement of facts.
  - (5). Findings on court's own motion.
- 389. Waiver.
- 390. Time for making findings.
- 391. Facts and conclusions to be found.
- 392. Requests for findings.

**388. TRIAL****X. TRIAL BY COURT.(Cont'd)**

- (.5). In general.
- (1). Necessity for request.
- (2). Time for making request.
- (3). Form and requisites of request.
- (4). Ruling on request.
- 393. Preparation and form in general.
  - (1). In general.
  - (2). Preparation by or for court.
  - (3). Reduction to writing.
  - (4). Setting out evidence.
- 394. Separate statement of facts and law.
  - (1). In general.
  - (2). Requests for separate statement.
  - (3). Form and sufficiency of statement.
- 395. Sufficiency in general.
  - (1). In general.
  - (2). Definiteness and certainty.
  - (3). General or specific findings or conclusions.
  - (4). Extrinsic facts or papers and inferences from facts stated.
  - (5). Ultimate or evidentiary facts.
  - (6). References to pleadings and evidence.
  - (7). Conclusions of law.
  - (8). Signature of judge.
  - (9). Findings as to immaterial matters.
- 396. Conformity to pleadings, issues, and proofs.
  - (1). In general.
  - (2). Findings on issues not raised by pleadings or evidence.
  - (3). Scope of issues raised by pleadings.
  - (4). Facts and evidence in general.
  - (5). Evidence improperly admitted or admitted without objection.
  - (6). Immaterial facts or issues.
  - (7). Matters admitted or not denied.
- 397. Failure to find on particular questions.
  - (1). In general.
  - (2). Findings sufficient to sustain judgment.
  - (3). Issues not raised by pleadings.
  - (4). Issues not supported by evidence.
  - (5). Immaterial issues.

**X. TRIAL BY COURT.(Cont'd)**

- (6). Effect of burden of proof, and presumption as to negative findings.
- 398. Inconsistent findings and conclusions.
- 399. Defects and errors.
- 400. Amendment or correction.
  - (1). In general.
  - (2). Remedies of parties, and proceedings.
- 401. Additional findings.
- 402. Venire de novo.
- 403. Filing and record.
- 404. Construction and operation.
  - (1). In general.
  - (2). Finding of fact or conclusion of law.
  - (3). Ultimate or evidentiary facts.
  - (4). General or special findings.
  - (5). Conclusiveness and effect in general.
  - (6). Effect as verdict.
- 405. Objections and exceptions.
  - (.5). In general.
  - (1). Necessity, nature, and effect.
  - (2). Time for making objection or exception.
  - (3). Form and sufficiency of objections and exceptions.

**XI. WAIVER AND CORRECTION OF IRREGULARITIES AND ERRORS.**

- 406. Defects and objections which may be waived or cured in general.
- 408. Irregularities in preliminary proceedings.
- 409. Irregularities in conduct of trial.
- 410. Rulings as to admissibility of evidence.
- 411. — In general.
- 412. — Admission.
- 413. — Exclusion.
- 414. — Striking out.
- 415. Misconduct of counsel.
- 416. Rulings as to weight and sufficiency of evidence.
- 417. — In general.
- 418. — Demurrer to evidence.
- 419. — Dismissal or nonsuit.
- 420. — Direction of verdict.
- 421. Instructions to jury.

**390. TRUSTS****XI. WAIVER AND CORRECTION  
OF IRREGULARITIES AND  
ERRORS.**(Cont'd)

- 421.1. — In general.
423. — Instructions given.
424. — Failure or refusal to instruct.
425. Misconduct of or affecting jury.
426. Verdict.
427. Findings by court.

**390. TRUSTS****SUBJECTS INCLUDED**

Estates in property, the legal title or power of disposition of which is held by one or more persons, wholly or in part for the use of another or others, under an equitable obligation, express or implied, resting upon such person or persons by reason of confidence reposed in him or them, to convey, apply, or deal with such property or its profits at the will or for the benefit of such other person or persons according to the confidence so reposed

Nature and incidents of such estates

Rights, powers, duties, and liabilities of persons creating such trusts, of trustees, and of cestuis que trust or beneficiaries in general

Judicial protection and control of trust property and trustees

Remedies and proceedings relating thereto

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Business trusts, including Massachusetts trusts and real estate investment trusts, see CORPORATIONS AND BUSINESS ORGANIZATIONS XV(D)

Charitable uses, see CHARITIES

Fiduciary relation in general, and particular fiduciary personal relations, see FRAUD, GUARDIAN AND WARD, ATTORNEYS AND LEGAL SERVICES, EXECUTORS AND ADMINISTRATORS, and other specific topics

Particular classes of persons, rights and liabilities in respect of trusts, see INFANTS and other specific topics

Perpetuities, restrictions on creation of, or of trusts for accumulation, see PERPETUITIES

Security for debt, conveyances in trust as—

General creditors, see CREDITORS' REMEDIES

Particular debts, see CHATTEL MORTGAGES, MORTGAGES AND DEEDS OF TRUST, SECURED TRANSACTIONS

Trade combinations, pools, etc., see ANTI-TRUST AND TRADE REGULATION, CONTRACTS, CONSPIRACY

Usufruct, see PROPERTY

Validity and construction of particular—

Deeds, see DEEDS

Marriage settlements, see MARRIAGE AND COHABITATION

Testamentary provisions, see WILLS

**I. CREATION, EXISTENCE, AND VALIDITY, ¶1–111.**

(A) EXPRESS TRUSTS, ¶1–61.5.

(B) RESULTING TRUSTS, ¶62–90.

(C) CONSTRUCTIVE TRUSTS, ¶91–111.

**II. CONSTRUCTION AND OPERATION, ¶112–154.**

(A) IN GENERAL, ¶112–128.

(B) ESTATE OR INTEREST OF TRUSTEE AND OF CESTUI QUE TRUST, ¶129–154.

**III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE, ¶155–170.****IV. MANAGEMENT AND DISPOSAL OF TRUST PROPERTY, ¶171–269.****V. EXECUTION OF TRUST BY TRUSTEE OR BY COURT, ¶270–288.****VI. ACCOUNTING AND COMPENSATION OF TRUSTEE, ¶289–333.****VII. ESTABLISHMENT AND ENFORCEMENT OF TRUST, ¶334–377.**

(A) RIGHTS OF CESTUI QUE TRUST AS AGAINST TRUSTEE, ¶334–348.

(B) RIGHT TO FOLLOW TRUST PROPERTY OR PROCEEDS THEREOF, ¶349–358.

(C) ACTIONS, ¶359–377.

**VIII. LIABILITIES ON TRUSTEES' BONDS, ¶378–387.**

**390. TRUSTS****I. CREATION, EXISTENCE, AND VALIDITY.****(A) EXPRESS TRUSTS.**

1. Nature and essentials of trusts.
2. What law governs.
3. Constitutional and statutory provisions.
4. — In general.
5. — Abolition of uses and trusts other than those expressly authorized.
6. — Adoption or re-enactment of statute of uses.
7. — Construction and operation of provisions authorizing trusts in general.
8. Persons who may create trusts.
9. Persons for whose benefit trusts may be created.
10. Property which may be subject of trusts.
11. Purposes for which trusts may be created.
  - (1). In general.
  - (2). To sell and convey real estate.
  - (3). Collection and distribution of rents and profits.
12. Validity of spendthrift trusts.
13. Consideration.
14. Trusts taking effect in future.
15. Limitation of use upon use, or of trust upon trust.
16. Invalid trusts valid as powers.
17. Validity of oral trusts, and requirement of statute of frauds.
  - (1). In general.
  - (2). Trusts in personalty.
  - (3). Trusts in lands in general.
  - (4). Agreement to hold in trust.
  - (5). Agreement to reconvey.
  - (6). Agreement as to lands to be purchased.
  - (7). Trusts in proceeds of sales.
  - (8). Execution or part performance of trust.
19. Written instruments creating or declaring trusts.
  - 19.1. — In general.
20. — Nature and requisites in general.
21. — Form and contents.
  - (1). In general.
  - (2). Certainty.
22. — Execution and delivery.
23. — Recording and registration.
24. Sufficiency of language used.

**I. CREATION, EXISTENCE, AND VALIDITY.(Cont'd)**

25. — In general.
  - (1). In general.
  - (2). Recitals as to consideration for conveyance.
  - (3). Reservations, conditions, and other limitations in conveyances.
26. — Grants of authority involving trust.
27. — Provisions for maintenance.
28. — Spendthrift trusts.
29. — Precatory words.
30. Covenants to stand seised to uses, and deeds operating as such covenants.
- 30.5. Transactions creating or operating as trusts in general.
  - (1). In general.
  - (2). Transactions between persons in confidential relations.
31. Transfer of legal title.
33. Delivery of money or other personal property.
34. Deposit of money in bank.
  - (1). In general.
  - (2). Acts and declarations showing intent of depositor.
  - (3). Retention or delivery of passbook or certificate.
  - (4). Subsequent withdrawals.
35. Agreements to hold or convey to use of another.
  - (1). In general.
  - (2). Agreement to hold for joint use or benefit of holder of legal title and others.
  - (3). Agreements between testator and devisees or legatees.
  - (4). Agreement to reconvey.
36. Devise or bequest to use of another.
37. Life insurance payable to another.
- 37.5. Necessity and sufficiency of delivery of property.
38. Acceptance by trustee.
39. Acceptance by cestui que trust.
40. Evidence to establish trust.
  - 40.1. — In general.
41. — Presumptions and burden of proof.
42. — Admissibility in general.
43. — Parol evidence.
  - (1). In general.

**390. TRUSTS****I. CREATION, EXISTENCE, AND VALIDITY.(Cont'd)**

- (2). Contradicting, varying, or adding to instrument creating trust.
- (3). Intention of parties to absolute conveyance, transfer, or devise.
- 44. — Weight and sufficiency.
  - (1). In general.
  - (2). Evidence to charge grantee or assignee as trustee.
  - (3). Degree of proof.
- 45. Validity.
- 46. — In general.
- 47. — Mistake.
- 48. — Fraud.
- 49. — Undue influence.
- 50. — Duress.
- 51. — Illegality of provisions.
- 52. Partial invalidity.
- 53. Estoppel or waiver as to defects or objections.
- 54. Ratification of defective or invalid trust.
- 55. Right to contest validity of trust.
- 56. Cancellation for invalidity.
- 57. Reformation.
- 58. Modification.
- 59. Revocation.
  - (1). In general.
  - (2). Conditions or reservations in instrument creating trust.
  - (3). Inclusion or omission of reservation as affecting validity of trust.
  - (4). Mode of revocation.
- 60. Duration.
- 61. Termination.
  - (.5). In general.
  - (1). By decree of court.
  - (2). By death of parties.
  - (3). By acts, agreements, and conveyances.
  - (4). Effect.
  - (5). Revival.
- 61.5. Effect of invalidity.

**(B) RESULTING TRUSTS.**

- 62. Nature of resulting trust.
- 62.5. What law governs.
- 63. Constitutional and statutory provisions.
- 63.5. Effect of statute of frauds and statutes prohibiting parol trusts.

**I. CREATION, EXISTENCE, AND VALIDITY.(Cont'd)**

- 63.9. Creation and existence in general.
- 64. Failure or defect in creation, operation or execution of express trust.
- 65. — In general.
- 66. — Ineffective declaration of trust, conveyance, or devise.
- 67. — Residue or surplus not included in trust or not required for execution thereof.
- 68. — Failure, lapse, or other extinguishment of trust.
- 69. Voluntary conveyance to grantee not entitled to take beneficial interest.
- 70. Intention of grantee to hold for or convey to another.
- 71. Payment of consideration for conveyance to another.
- 72. — In general.
- 73. — Property subject of trust.
- 74. — Nature of sale and conveyance.
- 75. — Nature of consideration.
- 76. — Source of consideration.
- 77. — Time of payment.
- 78. — Mode and sufficiency of payment.
- 79. — Part payment.
- 80. — Purpose of payment in general.
- 81. — Relationship between parties.
  - (1). In general.
  - (2). Husband and wife.
  - (3). Payment with joint funds of husband and wife.
  - (4). Parent and child.
- 82. — Payment as gift or advancement.
- 83. Payment of purchase money on purchase of land.
- 84. Payment of fiduciary funds for conveyance to person holding fiduciary relation.
- 85. Evidence to establish trust.
- 85.1. — In general.
- 86. — Presumptions and burden of proof.
- 87. — Admissibility in general.
- 88. — Parol evidence.
- 89. — Weight and sufficiency.
  - (1). In general.
  - (2). Payment or ownership of money.
  - (3). Purpose of payment.

**390. TRUSTS****I. CREATION, EXISTENCE, AND  
VALIDITY.(Cont'd)**

(4). Agreements, admissions, and declarations.

(5). Degree of proof required.

90. Questions for jury.

**(C) CONSTRUCTIVE TRUSTS.**

91. Nature of constructive trust.

92. Constitutional and statutory provisions.

92.5. Statute of frauds and statutes prohibiting parol trusts.

93. Mistake in conveyance.

94. Invalidity or rescission of conveyance or transfer.

94.5. Fraud in general.

95. Fraud or other wrong in acquisition of property in general.

96. Breach of oral agreement to hold in trust or reconvey land voluntarily conveyed.

97. Fraud or undue influence in procuring or preventing devise or bequest.

98. Breach of oral agreement as to lands to be purchased.

99. — In general.

100. — Judicial sale.

101. Breach of contract of agency or employment.

102. Breach of duty by person in fiduciary relation in general.

(1). In general.

(2). Executors, administrators, and guardians.

103. Contracts and transactions between persons in confidential relations.

(1). In general.

(2). Family relation in general.

(3). Husband and wife.

(4). Attorney and client.

(5). Partners.

104. Wrongful assumption of control of property.

105. Wrongful disposition of property.

106. Evidence to establish trust.

106.1. — In general.

107. — Presumptions and burden of proof.

108. — Admissibility in general.

109. — Parol evidence.

110. — Weight and sufficiency.

111. Questions for jury.

**II. CONSTRUCTION AND OPERATION.****(A) IN GENERAL.**

112. Application of general rules of construction.

113. What law governs.

114. Trusts executed or executory.

117. Construing instruments together.

118. Extrinsic circumstances.

119. Evidence to aid construction.

121. Parties.

121.1. — In general.

122. — Settlers or creators of trusts.

123. — Trustees.

124. — Cestuis que trust.

125. Property included.

126. Capital and income.

127. Purposes of trust.

128. Priority between declarations of trust.

**(B) ESTATE OR INTEREST OF TRUSTEE  
AND OF CESTUI QUE TRUST.**

129. Nature of estate in trust.

130. Statutory provisions.

130.5. Omission of words of inheritance.

131. Operation of statute of uses to execute trusts in general.

132. Legal estate under invalid use or trust vesting in person entitled to use or beneficial interest.

133. Extent of estate or interest of trustee.

134. — In general.

135. — Active trusts.

136. — Passive trusts.

136.5. — Rights and remedies of creditors of trustee.

137. Estoppel of trustee as to title of creator of trust.

138. Adverse possession of trustee.

139. Extent of estate or interest of cestui que trust.

139.1. — In general.

140. — Express trusts in general.

(1). In general.

(2). Conditions and limitations in general.

(3). Estate or interest of remaindermen.

141. — Spendthrift trusts.

142. — Resulting trusts.



**390. TRUSTS****II. CONSTRUCTION AND OPERATION.**(Cont'd)

- 143. — Constructive trusts.
- 144. Estoppel of cestui que trust as to title of trustee.
- 145. Mutual rights and liabilities of cestuis que trust.
- 146. Transfer of estate or interest of cestui que trust.
- 146.1. — In general.
- 147. — Express trusts in general.
  - (1). In general.
  - (2). Mortgage or pledge.
- 148. — Restraints on anticipation of income.
- 149. — Implied trusts.
- 150. Rights and remedies of creditors of cestui que trust.
- 151. — In general.
- 151.1. — Trust property in general.
- 151.2. — Rents, profits, accumulations and surplus.
- 151.3. — Proceedings.
- 152. — Spendthrift trusts.
- 153. Interest remaining in settlor or creator of trust.
- 154. Merger of estates.

**III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE.**

- 155. Designation by creator of trust.
- 156. Executors as trustees.
- 157. Appointment by other trustees or by cestui que trust.
- 158. Jurisdiction of courts.
- 159. Qualifications of trustee.
- 160. Judicial appointment.
  - (1). In general.
  - (2). Want of trustee.
  - (3). Proceedings.
- 161. Bond.
- 162. Resignation and discharge.
- 163. Disqualification.
- 164. Removal.
- 164.1. — In general.
- 165. — Power to remove.
- 166. — Grounds.
  - (1). In general.
  - (2). Mismanagement or misconduct in execution of trust.
- 167. — Proceedings.

**III. APPOINTMENT, QUALIFICATION, AND TENURE OF TRUSTEE.**(Cont'd)

- 168. Death and survivorship.
- 169. Appointment and succession of new trustee.
  - (1). In general.
  - (2). Provisions of instrument creating trust.
  - (3). Proceedings.
- 170. Intermeddling with trust estate and trustees de son tort.

**IV. MANAGEMENT AND DISPOSAL OF TRUST PROPERTY.**

- 171. Authority of trustee in general.
- 172. Limitations of authority imposed in creation of trust.
- 173. Representation of cestui que trust by trustee.
- 176. Delegation of powers and duties.
- 177. Supervision and discretionary powers.
- 178. Instructions of court.
- 179. Diligence and good faith of trustee.
- 181. Collection of outstanding property.
  - (1). In general.
  - (2). Release or compromise of demands.
- 182. Possession, use, and care of property.
- 183. Rents and profits.
- 184. Repairs and improvements.
- 186. Leaseholds.
- 187. Charges on and claims against property.
- 188. Sale and conveyance.
- 188.1. — In general.
- 189. — Authority and duty in general.
- 190. — Statutory provisions.
- 191. — Power of sale in instrument creating trust.
  - (1). In general.
  - (2). Provisions implying power of sale.
  - (3). Exercise of power in general.
- 192. — Consent of cestui que trust.
- 193. — Compelling sale under power.
- 193.5. — Authority of court and grounds for ordering sale.
- 194. — Proceedings for order of court for sale.
- 195. — Time, manner, and conduct of sale.
- 196. — Terms and conditions of sale.

**390. TRUSTS****IV. MANAGEMENT AND DISPOSAL  
OF TRUST PROPERTY.(Cont'd)**

- 197. — Validity of sale.
- 198. — Purchase by trustee.
- 199. — Purchase by cestui que trust.
- 200. — Conveyance and delivery of property.
  - (.5). In general.
  - (1). Conveyance.
  - (2). Confirmation by court.
- 201. — Payment or recovery of purchase money.
- 202. — Application of proceeds.
- 203. — Rights and title of purchasers.
- 204. — Setting aside.
- 205. Lease.
- 206. Mortgage or pledge.
  - (.5). In general.
  - (1). Power to mortgage or pledge.
  - (2). Mortgage under order of court.
  - (3). Purpose of mortgage.
  - (4). Misapplication of proceeds.
  - (5). Property included.
  - (6). Form, requisites, and validity.
  - (7). Consent of cestui que trust, and estoppel to make objection.
- 207. Indorsement and transfer of bills, notes, and securities.
- 208. Assignment and transfer of rights of action.
- 209. Contracts.
- 210. — In general.
- 211. — Services.
- 212. — Borrowing money.
- 213. — Bills and notes.
- 215. Property acquired by trustee.
- 216. Investments.
- 217.1. — In general.
- 217.2. — Place of investment.
- 217.3. — Nature of investment or security in general.
  - (1). In general.
  - (2). Directions of settlor.
  - (3). Effect of statutes.
  - (4). Non-legal securities.
  - (5). Prudent investor rule.
  - (6). Income and diversification.
  - (7). Particular investments.

**IV. MANAGEMENT AND DISPOSAL  
OF TRUST PROPERTY.(Cont'd)**

- (8). Participations and common trust funds.
- (9). Retention or reinvestment.
- 217.4. — Corporate stocks and bonds.
- 217.5. — Incumbered property.
- 218. — Loss or depreciation.
  - (1). In general.
  - (2). Consent of cestui que trust, and estoppel to charge trustee with loss.
- 219. Interest on funds of estate.
  - (1). In general.
  - (2). Rate, time, and computation.
- 220. Dedication of property to public use.
- 221. Deposits.
- 222. Loans.
- 223. Gifts.
- 224. Expenditures.
- 225. — In general.
- 226. — Taxes and assessments.
- 227. — Counsel fees and costs.
- 228. Submission to arbitration.
- 229. Confession of judgment.
- 230. Estoppel.
- 231. Individual interest in transactions.
  - (1). In general.
  - (2). Purchase of property in general.
  - (3). Purchase of adverse title or claim.
- 232. Fraud.
- 233. Waste, conversion, or embezzlement by trustee.
- 234. Loss of property.
- 235. Torts.
- 236. Reimbursement and indemnity to trustee.
- 237. Ratification of unauthorized acts.
- 238. Cotrustees.
- 238.1. — In general.
- 239. — Joint or several authority.
- 240. — Joint or several liability.
- 241. — Acting trustee.
- 242. — Surviving trustee.
- 243. Successive trustees.
- 244. Representatives of deceased trustees.
- 245. Actions between, by, or against trustees.
  - 245.1. — In general.

**390. TRUSTS****IV. MANAGEMENT AND DISPOSAL  
OF TRUST PROPERTY.(Cont'd)**

- 246. — Capacity of trustee to sue and be sued in general.
- 247. — Right of action by beneficiary.
- 248. — Rights of action and defenses between cotrustees.
- 249. — Rights of action by trustees.
- 250. — Rights of action against trustees.
- 251. — Defenses against trustees in general.
- 252. — Defenses by trustees in general.
- 253. — Set-off and counterclaim.
- 254. — Jurisdiction.
- 256. — Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
- 257. — Parties.
- 258. — Joinder or intervention in actions by others.
- 259. — Termination of trust or removal or death of trustee pending action.
- 260. — Process and appearance.
- 261. — Pleading.
- 262. — Evidence.
- 263. — Trial.
- 265. — Judgment and relief.
- 266. — Execution and enforcement of judgment.
- 267. — Appeal and error.
- 268. — Costs.
- 269. — Conduct of action or defense.

**V. EXECUTION OF TRUST BY TRUSTEE  
OR BY COURT.**

- 270. Duty of trustee in general.
- 271. Rights and powers of trustee.
- 271.5. Instructions of court.
- 272. Distinction between capital and income.
- 272.1. — In general.
- 272.2. — Profits on sale of property.
- 272.3. — Dividends, rights, and additional stock.
  - (1). In general.
  - (2). Earnings or capital as source; wasting assets corporations.
  - (3). Time earned, declared, or paid; undeclared earnings.
  - (4). Extraordinary dividends.
  - (5). Subscription rights and other non-cash distributions in general.

**V. EXECUTION OF TRUST BY TRUSTEE  
OR BY COURT.(Cont'd)**

- (6). Stock splits and stock dividends.
- (6.1). — In general.
- (7). — Earnings or capital as source, and time of accrual of earnings.
- (8). — Capitalization of surplus.
- (9). — Shares or securities of other corporations.
- (10). — Directions of settlor.
- (11). — Merger, reorganization, divestiture, or liquidation, distributions pursuant to.
- 273. Right to income and accumulations.
- 273.5. Right to principal or legal estate.
- 274. Adjustment and apportionment of expenses or losses.
  - (1). In general.
  - (2). Taxes, incumbrances, insurance, and repairs.
  - (3). Compensation of trustees and attorneys and cost of administration.
  - (4). Premiums and commissions on investments.
- 275. Reservation of funds to meet contingencies.
- 276. Expenditure of principal.
- 277. Advances by trustee.
- 278. Sufficiency of execution of trust in general.
- 279. Execution of powers in trust.
- 280. Payment or distribution of income or accumulations in general.
- 281. Payment of annuities.
- 282. Payment or distribution of proceeds of trust property.
- 283. Transactions between trustee and cestui que trust in general.
  - (1). In general.
  - (2). Purchase of trust property by trustee.
- 284. Conveyance of trust property to cestui que trust.
- 285. Unauthorized advancements.
- 286. Reconveyance of trust property to settlor or creator of trust.
- 287. Execution of trust devolving on court.

**390. TRUSTS****V. EXECUTION OF TRUST BY TRUSTEE  
OR BY COURT.(Cont'd)**

288. Setting aside unauthorized acts and agreements.

**VI. ACCOUNTING AND COMPENSATION  
OF TRUSTEE.**

289. Duty to account in general.

291. Who entitled to require accounting.

292. Who liable to account in general.

293. Cotrustees.

294. Successors and representatives.

295. Property to be included.

296. Release from liability.

297. Nature and form of proceeding for accounting.

298. Jurisdiction of courts.

299. Proceedings for intermediate or partial accounting.

299.1. — In general.

300. — By trustee.

301. — Compelling accounting.

302. Proceedings for final settlement.

302.1. — In general.

303. — By trustee.

304. — Compelling accounting.

305. Actions for accounting.

306. Order or interlocutory judgment or decree to account.

307. Charges.

308. — In general.

309. — Interest.

310. Credits.

311. — In general.

312. — Expenses and disbursements.

313. — Counsel fees and costs.

314. Compensation.

315. — In general.

(1). In general.

(2). Amount.

(3). Allowance and recovery.

316. — Commissions.

(1). In general.

(2). Amount and computation.

317. — Extra allowances.

318. — Cotrustees.

319. — Successive trustees.

320. — Lien.

321. — Forfeiture or deprivation.

**VI. ACCOUNTING AND COMPENSATION  
OF TRUSTEE.(Cont'd)**

322. Form and requisites of account.

323. Vouchers and proof of payment.

324. Objections and exceptions to account.

325. Evidence.

326. Hearing or reference.

327. Judgment or decree.

328. Opening or vacating.

329. Review.

330. Costs and expenses.

331. Operation and effect of accounting.

332. Private accounting and settlement.

333. Actions to open or set aside settlement.

**VII. ESTABLISHMENT AND ENFORCEMENT  
OF TRUST.****(A) RIGHTS OF CESTUI QUE TRUST  
AS AGAINST TRUSTEE.**

334. Establishment of existence of trust.

336. Enforcing performance of duties of trust.

337. Setting aside wrongful acts of trustee.

338. Reimbursement of advances and expenditures made by cestui que trust.

339. Personal liability of trustee for violation of trust.

340. Lien on property of trustee.

341. Insolvency of trustee.

342. Priorities of cestui que trust and trustee's creditors.

343. Estoppel or waiver.

344. Persons entitled to enforce trust.

344.1. — In general.

345. — Express trusts.

346. — Resulting trusts.

347. — Constructive trusts.

348. Persons against whom trust may be enforced.

**(B) RIGHT TO FOLLOW TRUST PROPERTY  
OR PROCEEDS THEREOF.**

349. Nature and grounds of right.

350. Election of remedy.

351. Trust property or funds mingled with property or funds of trustee.

352. — In general.

353. — Effect of insolvency of trustee.

354. Proceeds of trust property in hands of trustee.

**391. TURNPIKES AND TOLL ROADS****VII. ESTABLISHMENT AND ENFORCEMENT  
OF TRUST.(Cont'd)**

- 355. Trust property transferred to third persons.
- 356. — In general.
  - (1). In general.
  - (2). Payment, loan, or deposit of funds.
- 357. — Purchasers in good faith.
  - (1). In general.
  - (2). Notice.
  - (3). Consideration.
- 358. Identification of property.
  - (1). In general.
  - (2). Effect of payments or withdrawals from commingled funds.

**(C) ACTIONS.**

- 359. Nature and form of remedy.
  - (1). In general.
  - (2). Equity jurisdiction in general.
  - (3). Remedy at law.
- 360. Grounds of action.
- 361. Conditions precedent.
- 362. Defenses.
- 363. Jurisdiction.
- 364. Venue.
- 365. Time to sue, limitations, and laches.
  - (1). In general.  
*See also LIMITATION OF ACTIONS.*
  - (2). Laches in general.
  - (3). Repudiation or violation of trust, and knowledge of beneficiary as affecting laches.
  - (4). Resulting trusts.
  - (5). Constructive trusts.
- 366. Parties.
  - (.5). In general.
  - (1). Necessary and proper parties in general.
  - (2). Complainants.
  - (3). Defendants.
  - (4). Intervention.
- 367. Process and appearance.
- 368. Injunction.
- 369. Receiver or deposit in court.
- 370. Discovery.
- 371. Pleading.
  - (.5). In general.
  - (1). Bill, complaint, or petition in general.

**VII. ESTABLISHMENT AND ENFORCEMENT  
OF TRUST.(Cont'd)**

- (2). Allegations as to creation and existence of trust.
- (3). Allegations as to violation of trust.
- (4). Allegations as to conditions precedent.
- (5). Answer.
- (6). Cross-bill.
- (6.5). Demurrer.
- (7). Amendments.
- (8). Issues, proof, and variance.
- 372. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
- 373. Trial or hearing.
- 374. Scope and extent of relief.
- 375. Judgment or decree and enforcement thereof.
  - (1). In general.
  - (2). Enforcement.
- 376. Appeal.
- 377. Costs.

**VIII. LIABILITIES ON TRUSTEES' BONDS.**

- 378. Nature and extent in general.
- 379. Property covered.
- 380. Functions and acts covered.
- 382. Discharge of sureties.
- 383. Breach or fulfillment of conditions.
- 384. Necessity of accounting and default by principal.
- 385. Conclusiveness of adjudication against principal.
- 386. Summary remedies.
- 387. Actions.

**391. TURNPIKES AND TOLL ROADS****SUBJECTS INCLUDED**

Construction, maintenance, regulation and use of roads for passage over which tolls are taken

**391. TURNPIKES AND TOLL ROADS**

Organization, franchises and powers of companies formed to construct and maintain such roads

Establishment thereof by public authorities

Rights, duties and liabilities of such companies or authorities, as to the public and as to individuals, in respect of management and operation of their roads

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Automobiles, injuries in operation or use of toll roads or resulting from defects or obstructions therein, see **AUTOMOBILES**

Corporations, matters applicable to in general, see **CORPORATIONS AND BUSINESS ORGANIZATIONS**

Eminent domain, exercise of power, see **EMINENT DOMAIN**

Highways in general, see **HIGHWAYS**

Municipalities' powers to aid toll roads and liabilities incurred by them for that purpose, see **MUNICIPAL CORPORATIONS**

Taxation of toll roads, see **TAXATION**

Toll bridges, see **BRIDGES**

**I. ESTABLISHMENT, CONSTRUCTION,  
AND MAINTENANCE, ¶1-32.**

**II. REGULATION AND USE FOR TRAVEL, ¶33-51.**

**I. ESTABLISHMENT, CONSTRUCTION,  
AND MAINTENANCE.**

1. Right to establish and maintain in general.
2. Character of road as highway.
3. Constitutional and statutory provisions.
4. Establishment by public authorities.
5. Turnpike and toll-road companies.
  - 5.1. — In general.
6. — Incorporation and organization.
7. — Capital, stock, and stockholders.
8. — Officers and agents.
9. — Franchises, privileges, and powers.
10. — Public aid.
11. Amendment or revocation of charters.
12. Location.
13. — In general.
14. — Use of highway or other road.
15. Right of way and other interests in land.
16. Rights of abutting owners.

**I. ESTABLISHMENT, CONSTRUCTION,  
AND MAINTENANCE.(Cont'd)**

17. Construction.
18. Maintenance and repair.
19. — In general.
20. — Supervision and enforcement by public authorities.
21. Injuries from construction or maintenance.
22. Penalties for failure to construct or maintain.
23. Sale and transfer of road.
24. Mortgages.
25. Acquisition of road by public authorities.
26. Injuries to road or other property.
- 26.5. Actions by or against companies in general.
27. Insolvency and receivers.
28. Reorganization and consolidation of companies.
29. Abandonment of road or franchise.
30. Duration and termination of charter or franchise.
31. Forfeiture of franchise and dissolution.
32. Offenses incident to construction and maintenance.

**II. REGULATION AND USE FOR TRAVEL.**

33. Power to control and regulate.
34. Statutory and municipal regulations.
35. Licenses and taxes.
36. Mode and purposes of use.
37. Tolls.
  - 37.1. — In general.
38. — Right to exact.
39. — Liability to pay.
40. — Exemptions.
  - (1). In general.
  - (2). Contracts for exemption.
41. — Rate and amount.
42. — Tollgates and tollhouses.
43. — Collection and enforcement.
44. Liabilities for injuries.
  - 44.1. — In general.
45. — Nature and grounds in general.
46. — Defects or obstructions causing injury.
47. — Notice of defects or obstructions.
48. — Contributory negligence.

**392T. UNEMPLOYMENT COMPENSATION****II. REGULATION AND USE  
FOR TRAVEL.**(Cont'd)

- 49. Actions for injuries.
- 50. Penalties for violations of regulations.
- 51. Offenses incident to travel.

**392. UNDERTAKINGS****SUBJECTS INCLUDED**

- Promises in writing, not under seal, given as security for performance of some particular act required in a judicial proceeding
- Nature, requisites, validity, construction, operation and effect of such instruments in general
- Breach of undertakings
- Proceedings to enforce liabilities of sureties

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

- Bonds under seal, see BONDS
- Particular proceedings, undertakings incident to, see ARREST, BAIL, CREDITORS' REMEDIES, and other specific topics
- Recognizances entered into of record, see RECOGNIZANCES
- 1. Nature and essentials in general.
- 2. Requisites and validity.
- 3. Construction and operation.
- 6. Extent of liability.
- 8. Actions.

**392T. UNEMPLOYMENT  
COMPENSATION****SUBJECTS INCLUDED**

- Covered employment relationships
- Persons entitled to compensation

Proceedings for determination of entitlement to compensation and review thereof

Payment, amount and period of compensation

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

- Disability insurance, see INSURANCE
- Employee pension and benefit plans, see LABOR AND EMPLOYMENT
- Employment relationships in general, rights and duties incident thereto, and disputes involving, see LABOR AND EMPLOYMENT
- Federal and state disability assistance and benefits, see SOCIAL SECURITY, PUBLIC ASSISTANCE
- Federal and state old age assistance and benefits, see SOCIAL SECURITY, PUBLIC ASSISTANCE
- Government employment, rights and duties incident thereto, and disputes involving, see COUNTIES, MUNICIPAL CORPORATIONS, PUBLIC EMPLOYMENT, STATES, TOWNS, UNITED STATES, and other specific topics
- Taxation of employers for unemployment compensation, see INTERNAL REVENUE, TAXATION
- Workers' compensation, see WORKERS' COMPENSATION

- I. IN GENERAL, ¶1-14.
- II. EMPLOYMENTS, EMPLOYEES, AND EMPLOYERS COVERED, ¶15-39.
- III. RIGHT TO COMPENSATION IN GENERAL, ¶40-59.
- IV. CAUSE OF UNEMPLOYMENT, ¶60-179.
  - (A) IN GENERAL, ¶60-64.
  - (B) FAULT OR MISCONDUCT, ¶65-99.
  - (C) VOLUNTARY ABANDONMENT OF EMPLOYMENT, ¶100-149.
  - (D) LABOR OR TRADE DISPUTES, ¶150-179.
- V. DUTY TO SEEK WORK, ¶180-189.
- VI. DUTY TO ACCEPT WORK, ¶190-229.
- VII. ADMINISTRATIVE OFFICERS AND EMPLOYEES, ¶230-249.
- VIII. PROCEEDINGS, ¶250-449.
  - (A) IN GENERAL, ¶250-269.
  - (B) HEARING, ¶270-309.

**392T. UNEMPLOYMENT COMPENSATION****VIII. PROCEEDINGS—Cont'd**

- (C) ADMINISTRATIVE REVIEW, ¶310–339.
- (D) COSTS AND FEES, ¶340–349.
- (E) MISCONDUCT IN COMPENSATION PROCEEDINGS, ¶350–359.
- (F) EVIDENCE IN GENERAL, ¶360–399.
- (G) WEIGHT AND SUFFICIENCY OF EVIDENCE, ¶400–449.
- IX. JUDICIAL REVIEW, ¶450–519.
- X. ACTIONS, ¶520–529.
- XI. INJUNCTIONS, ¶530–539.
- XII. COMPROMISE AND SETTLEMENT, ¶540–549.
- XIII. WAIVER AND ESTOPPEL, ¶550–559.
- XIV. FUNDS, ¶560–569.
- XV. AMOUNT OF COMPENSATION, ¶570–579.
- XVI. PERIOD OF COMPENSATION, ¶580–589.
- XVII. PAYMENT OF BENEFITS, ¶590–594.
- XVIII. ASSIGNABILITY OR TRANSFER OF RIGHTS, ¶595–599.
- XIX. RECOVERY BACK OR RECOUPMENT OF BENEFITS, ¶600–609.
- XX. OFFENSES AND PENALTIES, ¶610.

**I. IN GENERAL.**

- 1. In general.
- 2. Purpose of unemployment compensation in general.
- 3. Constitutional and statutory provisions.
- 4. — In general.
- 5. — Purpose and intent of provisions.
- 6. — Construction of statutes.
  - (1). In general.
  - (2). Liberal or strict construction.
  - (3). — In general.
  - (4). — Disqualification in general.
  - (5). — Fault or misconduct.
  - (6). — Voluntary abandonment of employment.
- 7. — Validity.
- 8. — Retroactive application.
- 9. What law governs.
- 10. Preemption.

**II. EMPLOYMENTS, EMPLOYEES, AND EMPLOYERS COVERED.**

- 15. In general.

**II. EMPLOYMENTS, EMPLOYEES, AND EMPLOYERS COVERED.(Cont'd)**

- 16. Existence of employment relationship; services.
- 17. Compensation.
- 18. Place of employment.
- 19. Number of employees.
- 20. Simultaneous and successive employers.
- 21. Particular employments, employees, and employers.
- 22. — In general.
- 23. — Agriculture.
- 24. — Charitable, religious, and nonprofit organizations.
- 25. — Family relation between employee and employer.
- 26. — Governmental employment.
- 27. — Schools and colleges.
- 28. — Independent contractors and their employees.
- 29. — Independent trade or occupation.
- 30. — Salespersons and brokers.
- 31. — Seasonal employment.

**III. RIGHT TO COMPENSATION IN GENERAL.**

- 40. In general.
- 41. Aliens.
- 42. Other income.
- 43. — In general.
- 44. — Vacation pay.
- 45. — Dismissal, severance, or termination payments.  
*Excludes income during labor disputes, see ¶171.*
- 46. — Retirement benefits.
- 47. — Workers' compensation benefits.
- 48. Existence of unemployment.
- 49. — In general.
- 50. — Part-time employment.
- 51. — Self-employment; activity for or interest in business organization.
- 52. — Vacations, holidays, and leaves of absence.
- 53. — Seasonal employees.
- 54. — School or college employees.

**IV. CAUSE OF UNEMPLOYMENT.****(A) IN GENERAL.**

- 60. In general.



**392T. UNEMPLOYMENT COMPENSATION****IV. CAUSE OF UNEMPLOYMENT.(Cont'd)**

- 61. Discharge in general.
- 62. Retirement.

**(B) FAULT OR MISCONDUCT.**

- 65. In general.
- 66. Particular conduct or circumstances in general.
- 67. Violation of rules, disobedience, or insubordination in general.
- 68. — In general.
- 69. — Knowledge of rule or policy.
- 70. — Reasonableness of rule, policy, or request.
- 71. Refusal or nonperformance of work assignments.
- 72. Off-duty misconduct in general.
- 73. Inability to obtain licensure or certification.
- 74. Inefficiency, incompetency, or unsatisfactory performance in general.
- 75. Negligence in general.
- 76. Sleeping during work hours.
- 77. Absence or tardiness.
- 78. — In general.
- 79. — Transportation difficulties.
- 80. — Illness or chemical dependency.
- 81. — Failure to notify employer of absence or tardiness.
- 82. Dishonest or criminal acts.
- 83. — In general.
- 84. — Conviction of crime in general.
- 85. — Imprisonment.
- 86. — Employment applications.
- 87. Violence at workplace.
- 88. Alcohol or drug use or impairment.
- 89. — In general.
- 90. — Off-duty use or impairment.
- 91. — On-duty use or impairment.
- 92. — Failure of test.
- 93. Improper language; threats.
- 94. Sexual misconduct.
- 95. Garnishments.

**(C) VOLUNTARY ABANDONMENT OF EMPLOYMENT.**

- 100. In general.
- 101. Good cause in general.
- 102. Provoking discharge.
- 103. Provoking resignation.

**IV. CAUSE OF UNEMPLOYMENT.(Cont'd)**

- 104. Personal reasons in general.
- 105. Moving to other areas in general.
- 106. Family obligations in general.
- 107. Marriage, and change of domicile caused thereby.
- 108. Change in location of spouse's employment.
- 109. Child care issues.
- 110. Care of ill relatives.
- 111. Illness or physical disability of employee.
- 112. Pregnancy.
- 113. Pursuit of education.
- 114. Pursuit of other employment.
- 115. Suspension or reduction of operations by employer.
- 116. — In general.
- 117. — Layoffs in general.
- 118. — Early retirement.
- 119. Compensation and payment thereof.
- 120. Employee benefits.
- 121. Working conditions or assignments.
- 122. — In general.
- 123. — Reassignment, or change of duties or workload, in general.
- 124. — Suitability of work in general.
- 125. — Criticism by or problems with supervisor.
- 126. — Discipline of employees.
- 127. — Problems with co-workers.
- 128. — Harassment.
- 129. — Dangerousness of work; safety issues.
- 130. Working hours.
- 131. — In general.
- 132. — Reduction or increase in number of hours worked in general.
- 133. — Change in full-time or part-time status.
- 134. — Change in time of employment, shift, or days worked.
- 135. — Refusal of employer to accommodate employee's request for change.
- 136. Transportation issues.
- 137. — In general.
- 138. — Length of commute in general.
- 139. — Employer's relocation of place of employment.

**392T. UNEMPLOYMENT COMPENSATION****(D) LABOR OR TRADE DISPUTES.**

- 150. In general.
- 151. Strikes and walk-outs in general.
- 152. Lock-outs in general.
- 153. Merits or motives of dispute.
- 154. Existence and duration of dispute.
- 155. Suspension or termination of employment by employer.
- 156. — In general.
- 157. — Employees not involved in labor dispute in general.
- 158. — Employees involved in labor dispute.
  - (1). In general.
  - (2). Replacement of employees.
- 159. — Shortage of work or materials.
- 160. Participation or interest in dispute.
- 161. — In general.
- 162. — Membership or non-membership in union.
- 163. Failure or refusal to cross picket lines.
- 164. — In general.
- 165. — Fear or violence.
- 166. Grade or class of employees affected.
- 167. Establishment or place where dispute exists.
- 168. — In general.
- 169. — Separate establishments.
- 170. Disputes not involving claimant's employer.
- 171. Subsequent employment and other income.
- 172. — In general.
- 173. — Strike benefits.
- 174. Resumption of operations; re-employment.

**V. DUTY TO SEEK WORK.**

- 180. In general.
- 181. Efforts to obtain employment.
- 182. — In general.
- 183. — Registration requirements.
- 184. — Reporting requirements.
- 185. — Referral requirements.
- 186. — Interview requirements.

**VI. DUTY TO ACCEPT WORK.**

- 190. In general.
- 191. Cause for refusal in general.

**VI. DUTY TO ACCEPT WORK.(Cont'd)**

- 192. Availability in general.
- 193. — In general.
- 194. — Availability of work.
- 195. — Availability of claimant.
- 196. Suitability in general.
- 197. Capability in general.
- 198. Length of unemployment, effect of.
- 199. Personal considerations in general.
- 200. Conditions and restrictions demanded by claimant, in general.
- 201. Knowledge, skill, or experience.
- 202. — In general.
- 203. — Usual work or occupation.
- 204. Labor disputes, work available due to.
- 205. Union membership considerations.
- 206. Physical condition and health.
- 207. — In general.
- 208. — Pregnancy.
- 209. — Age.
- 210. Retirees.
- 211. Students.
- 212. Temporary work.
- 213. — In general.
- 214. — Anticipated return to former employment.
- 215. Working hours.
- 216. — In general.
- 217. — Part-time work.
- 218. Transportation difficulties.
- 219. Location of work.
- 220. Compensation.
- 221. Offers from former employer.
- 222. — In general.
- 223. — Suitability.

**VII. ADMINISTRATIVE OFFICERS AND EMPLOYEES.**

- 230. In general.
- 231. Boards, commissions, and offices, in general.
- 232. Officers and employees in general.
- 233. Powers in general.
- 234. Duties in general.
- 235. Jurisdiction in general.
- 236. Rules and regulations in general.
- 237. — In general.
- 238. — Adoption.
- 239. — Construction.

**392T. UNEMPLOYMENT COMPENSATION****VII. ADMINISTRATIVE OFFICERS  
AND EMPLOYEES.(Cont'd)**

- 240. — Validity.
- 241. — Retroactive operation.

**VIII. PROCEEDINGS.****(A) IN GENERAL.**

- 250. In general.
- 251. Rules of procedure in general.
- 252. Claims and applications.
- 253. — In general.
- 254. — Time for filing.
- 255. Investigations and interviews.
- 256. Ex parte proceedings.
- 257. Parties.
- 258. Witnesses and subpoenas.
- 259. Determinations of other agencies, effect of.
- 260. — In general.
- 261. — Civil service proceedings.
- 262. — Workers' compensation proceedings.
- 263. — Tax proceedings.
- 264. Alternative dispute resolution decisions, effect of.

**(B) HEARING.**

*Includes appeals from decisions in ex parte proceedings.*

- 270. In general.
- 271. Right to hearing.
- 272. Notice.
- 273. Proceedings to obtain hearing.
- 274. — In general.
- 275. — Timeliness of request.
- 276. Conduct of hearing.
- 277. — In general.
- 278. — Reception of evidence in general.
- 279. — Bias of ALJ.
- 280. Witnesses.
- 281. — In general.
- 282. — Subpoenas.
- 283. — Examination.
- 284. Constitutionality of hearing.
- 285. Questions of fact; credibility determinations.
- 286. — In general.
- 287. — Employments, employees, and employers covered.
- 288. — Right to compensation in general.

**VIII. PROCEEDINGS.(Cont'd)**

- 289. — Cause of unemployment in general.
- 290. — Fault or misconduct.
- 291. — Voluntary abandonment of employment.
- 292. — Labor or trade disputes.
- 293. — Duty to seek work.
- 294. — Duty to accept work.
- 295. Findings and conclusions.
- 296. — In general.
- 297. — Necessity of findings.
- 298. — Specificity of findings.
- 299. Determination and order.
- 300. — In general.
- 301. — Conclusiveness and effect.
- 302. — Reopening or reconsideration.
- 303. — Modification.
- 304. Rehearing.

**(C) ADMINISTRATIVE REVIEW.**

- 310. In general.
- 311. Proceedings for review.
- 312. — In general.
- 313. — Time for proceedings.
- 314. Hearing; trial de novo.
- 315. — In general.
- 316. — New evidence.
- 317. Reference.
- 318. Scope of review.
- 319. — In general.
- 320. — De novo review.
- 321. — Substantial or competent evidence.
- 322. Findings and conclusions.
- 323. Determination and order.
- 324. — In general.
- 325. — Reopening or reconsideration.
- 326. — Modification.
- 327. — Remand or remittal.
- 328. Interstate appeals.

**(D) COSTS AND FEES.**

- 340. In general.

**(E) MISCONDUCT IN COMPENSATION  
PROCEEDINGS.**

- 350. In general.
- 351. False statements.

**392T. UNEMPLOYMENT COMPENSATION****(F) EVIDENCE IN GENERAL.**

- 360. In general.
- 361. Official or administrative notice.
- 362. Presumptions.
- 363. — In general.
- 364. — Employment relationship, existence of.
- 365. — Right to compensation, in general.
- 366. — Cause of unemployment in general.
- 367. — Fault or misconduct.
- 368. — Voluntary abandonment of employment.
- 369. — Labor or trade disputes.
- 370. — Duty to accept work.
- 371. — Matters related to compensation proceedings.
- 372. Burden of proof.
- 373. — In general.
- 374. — Employment relationship, existence of.
- 375. — Right to compensation, in general.
- 376. — Cause of unemployment in general.
- 377. — Fault or misconduct.
  - (1). In general.
  - (2). Violation of work rules, disobedience, or insubordination.
  - (3). Absence or tardiness.
- 378. — Voluntary abandonment of employment.
  - (1). In general.
  - (2). Good cause.
- 379. — Labor or trade disputes.
- 380. — Duty to accept work.
- 381. Admissibility.
- 382. — In general.
- 383. — Relevancy in general.
- 384. — Hearsay.
- 385. — Declarations and admissions.
- 386. — Documentary evidence.
- 387. — Affidavits.

**(G) WEIGHT AND SUFFICIENCY OF EVIDENCE.**

- 400. In general.
- 401. Hearsay in general.
- 402. Employments, employees, and employers covered.
- 403. — In general.

**VIII. PROCEEDINGS.(Cont'd)**

- 404. — Independent contractors and their employees.
- 405. Right to compensation in general.
- 406. — In general.
- 407. — Other income.
- 408. — Fact of unemployment.
  - (1). In general.
  - (2). Self-employment; activity for or interest in business organization.
  - (3). School or college employees.
- 409. Cause of unemployment in general.
- 410. — In general.
- 411. — Discharge in general.
- 412. Fault or misconduct.
- 413. — In general.
- 414. — Violation of rules, disobedience, or insubordination in general.
- 415. — Refusal or nonperformance of work assignments.
- 416. — Inefficiency, incompetency, or unsatisfactory performance in general.
- 417. — Negligence in general.
- 418. — Absence or tardiness.
- 419. — Dishonest or criminal acts.
- 420. — Violence in the workplace.
- 421. — Alcohol or drug use or impairment.
- 422. — Improper language; threats.
- 423. — Sexual misconduct.
- 424. Voluntary abandonment of employment.
- 425. — In general.
- 426. — Good cause in general.
- 427. — Moving to other areas in general.
- 428. — Illness or physical disability of employee.
- 429. — Pursuit of other employment.
- 430. — Suspension or reduction of operations by employer.
- 431. — Compensation and benefits.
- 432. — Working conditions or assignments.
- 433. — Working hours.
- 434. — Transportation issues.
- 435. Labor or trade disputes.
- 436. Duty to seek work.
- 437. Duty to accept work.
- 438. — In general.

**392T. UNEMPLOYMENT COMPENSATION****VIII. PROCEEDINGS.(Cont'd)**

- 439. — Availability.
- 440. — Suitability.
- 441. — Capability.
- 442. — Physical condition and health.
- 443. Matters relating to compensation proceedings.
- 444. — In general.
- 445. — Misconduct.

**IX. JUDICIAL REVIEW.**

*Includes appeals from judicial decisions.*

- 450. In general.
- 451. Applicability of administrative procedure acts.
- 452. Decisions reviewable.
- 453. — In general.
- 454. — Finality.
- 455. Persons entitled to seek review; parties.
- 456. Raising contentions below; preservation of claim; exhaustion.
- 457. Proceedings for review in general.
- 458. Petitions for review in general.
- 459. Briefs.
- 460. Time for proceedings.
- 461. — In general.
- 462. — Tolling of time period.
- 463. — Extension of deadline; excuse for noncompliance.
- 464. Effect of appeal or petition; supersedeas.
- 465. Record; transcript.
- 466. Dismissal of appeal.
- 467. Withdrawal of appeal.
- 468. Abandonment of appeal.
- 469. Scope of review.
- 470. — In general.
- 471. — Limitations on scope of review, in general.
- 472. — Violation of constitutional rights, in general.
- 473. — Reasonableness or rationality, in general.
- 474. — Deference to administrative determination, in general.
- 475. — Review in light most favorable to agency.
- 476. — Discretion of agency, and abuse thereof.

**IX. JUDICIAL REVIEW.(Cont'd)**

- 477. — Substitution of court's judgment for that of agency, in general.
- 478. — Presumptions and inferences, in general.
- 479. — Additional evidence, consideration of.
- 480. — De novo review in general.
- 481. — Questions of fact in general.
- 482. — Reasonableness of decision in light of findings.
- 483. — Conclusiveness of fact findings.
- 484. — Reweighing evidence.
- 485. — Evidence supporting findings, in general.
- 486. — Substantial evidence; competent evidence.
- 487. — Conflicting evidence.
- 488. — Weight of evidence.
- 489. — Credibility determinations.
- 490. — Decision against party with burden of proof.
- 491. — Questions of law; errors of law.
  - (1). In general.
  - (2). De novo review.
  - (3). Clear error.
- 492. — Mixed questions of law and fact.
- 493. — Particular cases and issues.
  - (1). In general.
  - (2). Employments, employees, and employers covered.
  - (3). Right to compensation in general.
  - (4). Cause of unemployment in general.
  - (5). Fault or misconduct.
  - (6). Voluntary abandonment of employment.
  - (7). Labor or trade disputes.
  - (8). Duty to seek work.
  - (9). Duty to accept work.
  - (10). Matters relating to compensation proceedings.
- 494. Determination in general.
- 495. Harmless error.
- 496. Reversible error.
- 497. Remand.
- 498. Rehearing, reopening or reconsideration.
- 499. Costs and fees.
- 500. Further review.

**392T. UNEMPLOYMENT COMPENSATION****X. ACTIONS.**

520. In general.

**XI. INJUNCTIONS.**

530. In general.

**XII. COMPROMISE AND SETTLEMENT.**

540. In general.

**XIII. WAIVER AND ESTOPPEL.**

550. In general.

**XIV. FUNDS.**

*Excludes employer accounts and experience ratings,  
see TAXATION ¶3291.*

560. In general.

**XV. AMOUNT OF COMPENSATION.**

570. In general.

571. Base for computation.

572. — In general.

573. — Wages.

574. — Vacation and holiday pay.

575. Reduction by reason of employment or other income.

576. — In general.

577. — Pension or retirement benefits.

578. — Vacation and holiday pay.

579. Reduction due to misconduct.

**XVI. PERIOD OF COMPENSATION.**

580. In general.

581. Extended benefits.

582. Disqualification periods.

583. — In general.

584. — Waiting periods in general.

585. — Misconduct.

**XVII. PAYMENT OF BENEFITS.**

590. In general.

**XVIII. ASSIGNABILITY OR TRANSFER OF RIGHTS.**

595. In general.

**XIX. RECOVERY BACK OR RECOUPMENT OF BENEFITS.**

600. In general.

601. Actions and proceedings.

602. Review.

**XX. OFFENSES AND PENALTIES.**

610. In general.

**393. UNITED STATES****SUBJECTS INCLUDED**

The political entity formed by adoption of the Constitution of the United States

Nature of the Union

Rights, powers, property, and functions of the national government in general, of Congress, and of the President and the executive departments and inferior officers in general

Contracts, torts, and other liabilities of and claims against the United States

Immunity of the United States, and waiver thereof

Court of Federal Claims (formerly Claims Court and Court of Claims), and proceedings therein

Actions against the United States

Liabilities to and claims by the United States, and actions thereon

Making or presentation of false claims against the United States

Employees, officers, and other agents of the United States

Corporations, special instrumentalities, and similar entities controlled by the United States

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Citizens of the United States and of the several states and their rights in general, see ALIENS, IMMIGRATION, AND CITIZENSHIP, CIVIL RIGHTS, CONSTITUTIONAL LAW

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Distribution of powers among legislative, judicial, and executive departments of government, see CONSTITUTIONAL LAW XX

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**393. UNITED STATES****II. LIABILITIES OF AND CLAIMS AGAINST  
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- 518. — Particular cases, United States as proper or indispensable party.
- 519. Process.
- 520. — In general.
- 521. — Method of service; who must be served.
- 522. — Time of service.
- 523. Appearance and representation by attorney.
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- 532. — Elements and measure of damages.
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- 542. Statutory provisions.
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- 544. Power, authority, and capacity to contract.
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- 553. — In general.
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- 565. Request for bids.
- 566. — In general; advertising.
- 567. — Specifications.
- 568. Bidders.
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- 571. — Conditions and restrictions on bidders.
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- 573. Bids.
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- 575. — Form and requisites; responsiveness.
- 576. — Subbids.
- 577. — Time for making bid.
- 578. — Amendment, correction, or withdrawal.
- 579. — Deposit or other security.
- 580. Acceptance or rejection.
- 581. — In general.
- 582. — Evaluation process.

**393. UNITED STATES****II. LIABILITIES OF AND CLAIMS AGAINST  
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- 584. — Requests for verification; confirmation.
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- 587. — Reconsideration.
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- 593. Award.
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- 595. — Time for making award.
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- 598. Rights and remedies of disappointed bidders; bid protests.
- 599. — In general.
- 600. — Administrative procedures in general.
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- 603. — Conditions precedent; exhaustion of remedies.
- 604. — Parties; standing.
- 605. — Scope of review.
- 606. — Time for proceedings.
- 607. — Evidence.
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- 609. — Recovery of bid preparation costs.

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- 611. In general.
- 612. Statutory provisions.
- 613. Express contracts in general.
- 614. Provisions required by law or regulation.
- 615. Formal requisites.
- 616. Necessity of writing.
- 617. Validity and sufficiency of contract.
- 618. — In general.
- 619. — Manner of making contract.
- 620. — Effect of partial invalidity.
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**II. LIABILITIES OF AND CLAIMS AGAINST  
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- 624. — Appropriation or seizure of property.
- 625. — Construction or manufacture.
- 626. — Inventions and patents.
- 627. — Reimbursement of expenses or losses.
- 628. — Supplies and services.
- 629. — Tenancy and use and occupation.
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- 649. Payment for labor and materials in general.
- 650. Claims and persons secured.
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- 652. — Labor or services in general.
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- 655. — Equipment, rental or repair.
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- 657. — Subcontractors.
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- 659. — Assignees.
- 660. — Extra work, changes, and repairs.
- 661. — Interest, costs, and taxes.
- 662. — Liabilities incurred for damages or to third persons.
- 663. — Supplies or property purchased or rented.
- 664. Actions on bonds.
- 665. — In general.
- 666. — Jurisdiction and venue.
- 667. — Conditions precedent.

**393. UNITED STATES****II. LIABILITIES OF AND CLAIMS AGAINST  
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- 668. — Notice of claim.
  - (1). In general.
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  - (4). Waiver and estoppel.
- 669. — Defenses.
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- 670. — Time for proceedings.
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  - (2). Prematurity; completion and final settlement.
- 671. — Persons entitled to sue.
- 672. — Parties.
- 673. — Persons liable.
- 674. — Pleading.
- 675. — Evidence.
- 676. — Questions of fact or law.
- 677. — Amount of recovery.
- 678. — Costs and fees; interest.
- 679. — Set-offs, deductions, and credits.
- 680. Rights and remedies of sureties.

**5. CONSTRUCTION AND OPERATION.**

- 681. In general.
- 682. What law governs.
- 683. Application of general rules of construction in general.
- 684. — In general.
- 685. — Construction against government in general.
- 686. — Construction as a whole.
- 687. Deference to agency interpretation.
- 688. Ambiguity in general.
- 689. Patent ambiguity doctrine; duty to inquire before bidding.
- 690. Extrinsic evidence.
- 691. Parties.
- 692. Third-party beneficiaries.
- 693. Subject-matter.
- 694. — In general.
- 695. — Bailments and leases.
- 696. — Construction of buildings and other public works.
- 697. — Goods sold or furnished.
- 698. — Provision of services.

**II. LIABILITIES OF AND CLAIMS AGAINST  
UNITED STATES.(Cont'd)**

- 699. — Title to goods or property.
- 700. Place and time of performance.
- 701. Conditions.
- 702. — In general.
- 703. — Indemnity, insurance and liability for damages.
- 704. — Inspection and tests.
- 705. Compensation.
- 706. — In general.
- 707. — Bailments and leases.
- 708. — Construction contracts in general.
- 709. — Cost-plus contracts.
- 710. — Goods sold or furnished in general.
- 711. — From special fund or appropriation.
- 712. Extra costs or expenses in general.
- 713. Changed or unexpected conditions.
- 714. — In general.
- 715. — Increased costs of labor or material.
- 716. Change in plans.
- 717. — In general.
- 718. — Change of materials or quantity.
- 719. — Effect of original contract provisions; what constitutes change.
- 720. — Sufficiency of approval; authority of officer.
- 721. Defective plans and mistakes.
- 722. Representations and specifications misleading contractor.
- 723. Conduct of contractor and third persons; relation to subcontractor.
- 724. Repairs and tests.
- 725. Taxes and interest.
- 726. Liquidated damages.
- 727. Time element; consequences of delay.
- 728. Termination or modification of original contract.
- 729. Preserving right to claim for extras; estoppel.

**6. ASSIGNMENT OF CONTRACT; SUBCONTRACT.**

- 731. In general.
- 732. Assignability; government approval.
- 733. Filing requirement.

**393. UNITED STATES****7. MODIFICATION.**

- 741. In general.
- 742. Acts constituting.
- 743. Authority of officer to modify.
- 744. Authority of government entity to modify.
- 745. Material amendments doctrine.
- 746. Consideration.
- 747. Validity of assent.
- 748. Operation and effect.

**8. RESCISSION, TERMINATION, OR ABANDONMENT.**

- 751. In general.
- 752. Statutory provisions.
- 753. Time of termination; waiver or loss of right.
- 754. Grounds in general.
- 755. Termination for default.
- 756. Notice to cure.
- 757. Operation and effect.

**9. PERFORMANCE OR BREACH.**

- 761. In general.
- 762. Statutory provisions.
- 763. Contractor's responsibility for nonperformance by subcontractor.
- 764. Implied duties and warranties.
- 765. — In general.
- 766. — Good faith and fair dealing.
- 767. — Cooperation.
- 768. Sufficiency of performance in general.
- 769. Excuses for nonperformance in general.
- 770. Tender of performance.
- 771. Acceptance of performance; approval or certificate of architect or engineer.
- 772. Waiver of rights under contract.
- 773. Reletting contract on failure of performance.
- 774. Completion of contract by government entity or surety in general.
- 775. Delivery.
- 776. Leases to government entity.
- 777. Alternative dispute resolution; arbitration of disputes.
- 778. Decisions of contracting officers on contract disputes.
- 779. — In general.
- 780. — Mistake.
- 781. — Construction of contracts.

**II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)**

- 782. — Time for filing claim.
- 783. — Failure to make decision.
- 784. — Conclusiveness of decision.
  - (1). In general.
  - (2). Exceptions; fraud or mistake.
- 785. — Review.
  - (1). In general.
  - (2). Necessity of claim.
  - (3). What constitutes a 'claim'.
  - (4). Boards of contract appeals.
  - (5). Jurisdiction of reviewing court.
  - (6). Effect of defective or missing certification.
  - (7). Scope of review.
  - (8). Evidence.
  - (9). Determination and disposition.
- 786. Withholding payments.
- 787. Defective plans or change of plans.
- 788. Replacement of materials under erroneous rulings.
- 789. Alterations and additional or extra work.
- 790. Partial performance.
- 791. Substantial performance.
- 792. Delay of government.
- 793. — In general; what is delay.
- 794. — Liability for damages in general.
- 795. — Overhead costs.
- 796. Delay of contractor.
- 797. Miscellaneous acts or conduct constituting breach.
- 798. Exhaustion of funds.
- 799. Cancellation of contract.
- 800. Wage increases and failure to provide labor.

**10. RIGHTS AND REMEDIES OF CONTRACTORS.**

- 801. In general.
- 802. Statutory provisions.
- 803. Recovery of deductions.
- 804. Breach of contract by government entity, rights on.
- 805. Relief of contractors in general; misrepresentation and mistake.
- 806. Cancellation or termination of contract in general, rights of contractors.
- 807. Unauthorized or illegal contracts.
- 808. Settlement, release, and waiver in general.



**393. UNITED STATES****II. LIABILITIES OF AND CLAIMS AGAINST  
UNITED STATES.(Cont'd)**

- 809. Administration of claims.
- 810. — In general.
- 811. — Presentment of claim.
  - (1). In general; who may file.
  - (2). Service or delivery; timeliness.
  - (3). Excuses for, and relief from, delay or failure.
  - (4). Form and sufficiency.
- 812. — Allowance and settlement.
- 813. — Payment and disposition of proceeds.
- 814. Remedies of contractors.
- 815. — In general.
- 816. — Time for proceedings.
- 817. — Conditions precedent.
- 818. — Defenses.
- 819. — Pleading.
- 820. — Evidence.
  - (1). In general.
  - (2). Presumptions and burden of proof.
  - (3). Weight and sufficiency.
  - (4). — In general.
  - (5). — Breach of contract.
  - (6). — Cancellation or termination.
  - (7). — Equitable adjustments.
  - (8). — Damages.
- 821. — Damages and amount of recovery.
  - (1). In general.
  - (2). Cancellation or termination.
  - (3). Breach of contract in general.
  - (4). Delay.
  - (5). Loss of profits.
- 822. — Questions of law and fact.
- 823. — Verdicts and findings.

**11. RIGHTS AND REMEDIES OF THIRD PARTIES.**

- 831. In general.
- 832. Statutory provisions.
- 833. Subcontractors, laborers, and materialmen; liens.
- 834. — In general.
- 835. — Lien or rights as to money due principal contractor.
- 836. — Payments to contractors; trust funds.

**II. LIABILITIES OF AND CLAIMS AGAINST  
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- 837. — Effect of contractor's assignment of contract; priorities.
  - 838. — Miscellaneous persons and claims protected.
  - 839. — Notice or claim; time.
  - 840. — Discharge or extinguishment.
  - 841. — Proceedings for enforcement.
  - 842. Rights and remedies of assignees.
  - 843. Rights and remedies of other third parties.
- 12. RIGHTS AND REMEDIES OF GOVERNMENT.**
- 851. In general.
  - 852. Breach by contractor, rights and remedies on.
  - 853. Liability for cost of completion by another.
  - 854. Proceedings.
  - 855. — In general.
  - 856. — Evidence.
  - 857. — Damages and amount of recovery.
  - 858. Kickbacks.

**(F) TORTS AND TORT CLAIMS.****1. IN GENERAL.**

- 861. In general.
- 862. Statutory provisions.

**2. LIABILITY AND IMMUNITY IN GENERAL.**

- 871. In general.
- 872. Waiver of immunity; limitations and exceptions in general.
- 873. Private person's liability as measure.
- 874. — In general.
- 875. — Activities not performed in private sector in general.
- 876. — Particular activities and determinations.
- 877. Acts of employees, officers, and agents; scope of employment.
- 878. — In general.
- 879. — Contractors in general; strict control test.
- 880. — Particular determinations.
  - (1). In general.
  - (2). Contractors.
  - (3). Health care workers.

**393. UNITED STATES****3. PARTICULAR LIMITATIONS ON AND EXCEPTIONS TO LIABILITY.**

- 881. In general.
- 882. Intentional torts in general.
- 883. Particular torts.
- 884. — In general.
- 885. — Assault and battery.
- 886. — False imprisonment, false arrest, malicious prosecution, and abuse of process.
- 887. — Libel and slander; defamation.
- 888. — Misrepresentation and deceit; fraud.
- 889. — Interference with contract rights.
- 890. Constitutional torts.
- 891. Detention of goods or merchandise.
- 892. Postal matter loss or miscarriage.
- 893. Tax assessment or collection.
- 894. Admiralty and maritime matters.
- 895. Foreign country.
- 896. Governmental operations; quarantine.
- 897. Excepted agencies or entities.

**4. PARTICULAR CLAIMS OR SITUATIONS, LIABILITY OF UNITED STATES.**

- 901. In general.
- 902. Negligent or wrongful acts in general; strict liability.
- 903. Aviation.
- 904. Employment.
- 905. Law enforcement.
- 906. Maritime.
- 907. Medical care and public health.
- 908. Motor vehicles.
- 909. Premises liability.
- 910. Prisons.
- 911. Property damage.
- 912. Subrogation, contribution, and indemnity against United States.

**5. DISCRETIONARY ACTS OR FUNCTIONS.**

- 921. In general.
- 922. Element of judgment or choice.
- 923. Considerations of public policy.
- 924. Particular functions or settings.
- 925. — In general.
- 926. — Aviation.
- 927. — Employment.
- 928. — Law enforcement.
- 929. — Maritime.

**II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)**

- 930. — Medical care and public health.
- 931. — Motor vehicles.
- 932. — Premises liability.
- 933. — Prisons.
- 934. — Property damage.

**6. ARMED SERVICES AND COMBATANT ACTIVITIES; FERES DOCTRINE.**

- 941. In general.
- 942. Particular claims or situations.
- 943. — In general.
- 944. — Constitutional, civil rights, and discrimination claims.
- 945. — Injuries to civilians and noncombatants.
- 946. — Injuries to detainees and nonuniformed combatants.

**7. REMEDIES AND PROCEDURE.**

- 951. In general.
- 952. Availability of other remedies.
- 953. — In general; exclusivity.
- 954. — Exhaustion of remedies.
- 955. — Final denial of claim.
- 956. — Effect of other particular remedies or statutory provisions.
- 957. Administration of claims.
- 958. — In general.
- 959. — Presentment of claim.
  - (1). In general; who may file.
  - (2). Service or delivery; timeliness.
  - (3). Excuses for, and relief from, delay or failure.
  - (4). Form and sufficiency.
- 960. — Allowance and settlement.
- 961. — Payment and disposition of proceeds.
- 962. Actions.
- 963. — In general.
- 964. — What law governs.
  - (1). In general; place of injury.
  - (2). Choice of state law.
- 965. — Jurisdiction and venue.
- 966. — Time for proceedings.
- 967. — Parties.
- 968. — Process and pleading.
- 969. — Evidence.
  - (1). In general.

**393. UNITED STATES****II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)**

- (2). Presumptions and burden of proof.
- (3). Weight and sufficiency of evidence.
- 970. — Damages.
- 971. — Trial, judgment, and relief.
- (G) ASSIGNMENT OF CLAIMS.**
- 981. In general.
- 982. Statutory provisions.
- 983. Assignments prohibited in general.
- 984. Claims within prohibition.
- 985. Contracts and liens of attorneys or collectors.
- 986. Involuntary assignments; transfers by operation of law in general.
- 987. Validity and effect of assignments.
- 988. Rights of assignee.
- (H) COURT OF FEDERAL CLAIMS (FORMERLY CLAIMS COURT AND COURT OF CLAIMS).**
- 991. In general; establishment and jurisdiction.
- 992. Claims against United States in general.
- 993. Particular claims, jurisdiction.
- 994. — In general.
- 995. — Administrative Procedure Act.
- 996. — Armed services, cases involving.
- 997. — Carriers' claims.
- 998. — Constitutional, civil rights, and discrimination claims in general.
- 999. — Contract claims.
  - (1). In general.
  - (2). Implied contracts.
- 1000. — Criminal matters.
- 1001. — Declaratory judgment.
- 1002. — Employment claims.
- 1003. — Equitable and nonmonetary relief.
- 1004. — Indians, claims involving.
- 1005. — Insurance.
- 1006. — Internal revenue and taxes.
- 1007. — Patents, use or infringement.
- 1008. — Privacy and freedom of information.
- 1009. — Punitive damages.
- 1010. — Return of money or property.

**II. LIABILITIES OF AND CLAIMS AGAINST UNITED STATES.(Cont'd)**

- 1011. — Takings claims.
- 1012. — Tort claims.
- 1013. Pendent jurisdiction; set-off and counterclaim.
- 1014. Reference by Congress or executive.
- 1015. — In general.
- 1016. — Equitable relief.
- 1017. Procedure in general.
- 1018. — In general.
- 1019. — As to jurisdiction.
- 1020. — As to pro se litigants.
- 1021. Consolidation, severance, and stay.
- 1022. Dismissal.
- 1023. Exhausting administrative remedies; suspension of proceedings.
- 1024. Time to sue and limitations.
- 1025. — In general; laches.
- 1026. — Particular claims.
- 1027. — Computation; commencement and accrual.
  - (1). In general.
  - (2). Relation back.
  - (3). Tolling.
  - (4). "Accrual suspension" doctrine.
  - (5). Continuing claims, wrongs, and violations.
  - (6). Transferred cases.
- 1028. — Availability and pendency of administrative proceedings.
- 1029. — Waiver of limitations; congressional reference cases.
- 1030. Parties.
- 1031. — In general.
- 1032. — Standing.
- 1033. — Intervention.
- 1034. — Notice to third parties.
- 1035. Class actions.
- 1036. Pleading.
- 1037. — In general.
- 1038. — Construction and presumptions as to pleadings.
- 1039. — Pro se pleadings.
- 1040. — Responsive pleadings; answer and counterclaim.
- 1041. — Amended and supplemental pleadings.
- 1042. — Judgment on pleadings.

**393. UNITED STATES****II. LIABILITIES OF AND CLAIMS AGAINST  
UNITED STATES.(Cont'd)**

- 1043. Discovery, subpoenas, and compelling production of evidence.
- 1044. — In general.
- 1045. — Failure to comply; sanctions.
- 1046. Evidence and affidavits.
- 1047. — In general.
- 1048. — As to jurisdiction.
- 1049. — Expert evidence.
- 1050. Work product.
- 1051. Trial in general.
- 1052. — In general.
- 1053. — Taking proofs; trial de novo.
- 1054. Reference; commissioner or trial judge.
- 1055. — In general.
- 1056. — Effect, and review of determination.
- 1057. Scope of inquiry; findings or report and determination.
- 1058. Judgment and relief.
- 1059. — In general.
- 1060. — Judgment on administrative record.
- 1061. — Summary judgment.
  - (1). In general.
  - (2). Particular cases.
  - (3). Proceedings; evidence.
- 1062. Post-decision relief; further proceedings after interlocutory determination.
- 1063. Indigent litigants; proceedings in forma pauperis.
- 1064. Sanctions.

**(I) INTEREST.**

- 1071. In general.
- 1072. Sovereign immunity and no interest rule; statutory authorization.
- 1073. Particular cases, interest allowed.
- 1074. Particular cases, interest not allowed.

**(J) COSTS AND FEES.****1. IN GENERAL.**

- 1081. In general.
- 1082. Necessity of statutory or contractual authorization; American rule in general.

**II. LIABILITIES OF AND CLAIMS AGAINST  
UNITED STATES.(Cont'd)**

- 1083. Statutory provisions.
- 1084. Discretion of court.
- 1085. Proceedings in which costs and fees are recoverable.
- 1086. — In general.
- 1087. — Civil actions.
- 1088. — Cases sounding in tort.
- 1089. — Administrative proceedings.
- 1090. Persons entitled; eligibility.
- 1091. — In general.
- 1092. — Pro se litigants.
- 1093. — Deterrence of litigant due to costs.
- 1094. — Maximum net worth or number of employees.
- 1095. Entities subject to liability.
- 1096. Immunity and waiver.
- 1097. — In general.
- 1098. — Contractual waivers.

**2. GROUNDS.**

- 1101. In general.
- 1102. Results of litigation; prevailing party.
- 1103. Basis for government's position; substantial justification.
- 1104. Particular cases and contexts.
- 1105. — In general.
- 1106. — Agriculture and rural development.
- 1107. — Alcohol, tobacco, and firearms.
- 1108. — Aliens, immigration, and citizenship.
- 1109. — Armed services.
  - (1). In general.
  - (2). Veterans' benefits.
- 1110. — Aviation.
- 1111. — Contracts and contract claims.
- 1112. — Customs and international trade.
- 1113. — Education.
- 1114. — Elections.
- 1115. — Eminent domain, condemnation, and takings.
- 1116. — Energy and telecommunications.
- 1117. — Environment and public lands.
  - (1). In general.
  - (2). Historical preservation.
  - (3). Plants and wildlife; endangered species.

**393. UNITED STATES****II. LIABILITIES OF AND CLAIMS AGAINST  
UNITED STATES.(Cont'd)**

- (4). Woods and forests.
- 1118. — Financial institutions.
- 1119. — Forfeitures.
- 1120. — Health.
  - (1). In general.
  - (2). Health insurance and benefits.
  - (3). Medicare and Medicaid.
- 1121. — Housing and urban development.
- 1122. — Indians.
- 1123. — Insurance.
- 1124. — Intellectual property.
- 1125. — Labor and employment.
  - (1). In general.
  - (2). Public employment; civil service.
- 1126. — Prisons, prisoners, and detainees.
  - (1). In general.
  - (2). Habeas corpus.
- 1127. — Public assistance.
  - (1). In general.
  - (2). Social security in general.
  - (3). Disability benefits and supplemental security income.
- 1128. — Securities regulation.
- 1129. — Taxation; Internal Revenue.
- 1130. — Torts and tort claims.
- 1131. — Trade regulation and economic development.
- 1132. Special circumstances.
- 1133. — In general.
- 1134. — Particular cases and contexts.
- 1135. Bad faith or improper purpose.
- 1136. — In general.
- 1137. — Particular cases and contexts.

**3. EXPENSES RECOVERABLE  
AND AMOUNT THEREOF.**

- 1141. In general.
- 1142. Reasonableness in general.
- 1143. Services of paralegals and nonattorneys.
- 1144. Depositions and discovery.
- 1145. Experts and expert witnesses.
- 1146. Legal research.
- 1147. Travel.
- 1148. Filing, copies, and transcripts.
- 1149. Attorney fees.
- 1150. — In general.

**II. LIABILITIES OF AND CLAIMS AGAINST  
UNITED STATES.(Cont'd)**

- 1151. — Lodestar.
- 1152. — Excessive hours.
- 1153. — Success of claims.
  - (1). In general.
  - (2). Partial or limited success; pro rata reduction.
- 1154. — Particular awards.
- 1155. Enhancement.
- 1156. — In general.
- 1157. — Distinctive knowledge or specialized skill.
- 1158. — Limited availability of qualified attorneys.
- 1159. — Exceptional success.
- 1160. — Other special factors.
- 1161. — Cost-of-living adjustment.
- 1162. Reduction.
- 1163. — In general.
- 1164. — Unreasonable protraction of final resolution.
- 1165. Contingency fees.
- 1166. — In general.
- 1167. — Particular cases and contexts.

**4. PROCEEDINGS.**

- 1171. In general.
- 1172. Prerequisites, jurisdiction, and standing.
- 1173. Timeliness of application or other request.
- 1174. — In general.
- 1175. — What time period applies.
- 1176. — Finality of judgment or other determination.
- 1177. — Effect of delay; excuses; tolling.
- 1178. Proof and documentation of expenses; evidence.
- 1179. — In general.
- 1180. — Presumptions and burden of proof.
- 1181. — Degree of proof.
- 1182. — Weight and sufficiency.
- 1183. Findings, determination, and order.
- 1184. — In general.
- 1185. — Necessity.
- 1186. — Sufficiency.
- 1187. Payment to attorney or client.
- 1188. Review of agency award.

**393. UNITED STATES****5. COSTS AND FEES INCURRED ON APPEAL.**

1191. In general.

**III. LIABILITIES TO AND CLAIMS  
BY UNITED STATES.**

1201. In general.

1202. Debts due the United States in general.

1203. Debt collection procedures.

1204. — In general.

1205. — Prejudgment remedies.

1206. — Compromise and settlement.

1207. — Fines and restitution.

1208. Priority of United States as creditor.

1209. — In general.

1210. — Statutory provisions.

1211. — What constitutes “claim,” “debt,”  
or “debtor”.

1212. — Nature of priority.

1213. — Insolvency of debtor.

(1). In general.

(2). Act of bankruptcy.

(3). Specific debtors.

1214. — Claims and agencies entitled to  
priority.

1215. — Priority in time.

1216. — Perfection of lien.

1217. — Priority over state or local gov-  
ernment claims.

1218. — Liability for disregarding priority.

1219. Recovery of payments by United  
States; recoupment.

1220. Tort claims by United States.

1221. Actions by United States.

1222. — In general.

1223. — Capacity of United States to sue.

(1). In general.

(2). Statutory authority.

(3). Parens patriae.

1224. — Rights of action by United States  
or United States officers.

(1). In general.

(2). Statutory authority.

(3). Common-law remedies.

1225. — Authority to sue in name of Unit-  
ed States or officer.

1226. — Standing.

1227. — Exhaustion of remedies.

1228. — Defenses in general.

1229. — Set-off and counterclaim against  
United States.**III. LIABILITIES TO AND CLAIMS  
BY UNITED STATES.(Cont'd)**

(1). In general.

(2). Nature of claim in general.

(3). Unliquidated damages.

(4). Torts.

(5). Independent transactions.

(6). Presentation and disallowance of  
claim.

(7). Judgment for excess.

1230. — Jurisdiction.

1231. — Venue.

1232. — Time to sue, limitations, and lach-  
es.

1233. — Parties.

1234. — Process.

(1). In general.

(2). Method of service; who must be  
served.

(3). Time of service.

1235. — Appearance and representation  
by attorney.

1236. — Pleading.

1237. — Evidence.

(1). In general.

(2). Presumptions and burden of  
proof.

(3). Admissibility.

(4). Weight and sufficiency.

1238. — Damages.

(1). In general.

(2). Elements and measure of dam-  
ages.

(3). Punitive damages.

1239. — Trial.

1240. — Judgment.

1241. — Execution and enforcement of  
judgment.

1242. — Interest.

1243. — Costs and fees.

**IV. FALSE CLAIMS.**

1251. In general.

1252. Statutory provisions.

1253. Elements.

1254. — In general.

1255. — Injury or financial loss.

1256. — Intent.

1257. — False claim.

**393. UNITED STATES****IV. FALSE CLAIMS.(Cont'd)**

- 1258. — False certification.
- 1259. — Materiality.
- 1260. — Submission to government.
- 1261. — Reverse false claims.
- 1262. Who may be liable.
- 1263. — In general.
- 1264. — Particular actors.
  - (1). In general.
  - (2). Contractors and subcontractors.
  - (3). Government actors.
- 1265. Who may bring action for false claims.
- 1266. — In general.
- 1267. — Standing.
- 1268. — United States as plaintiff or intervenor.
- 1269. Jurisdictional bars.
- 1270. — In general.
- 1271. — Public disclosure bar.
  - (1). In general.
  - (2). Original source exception.
- 1272. — First-to-file bar.
- 1273. — Other particular bars.
- 1274. Proceedings.
- 1275. — In general.
- 1276. — Time; limitations.
- 1277. — Pleading; complaint filed under seal.
- 1278. — Civil investigative demands.
- 1279. — Dismissal or settlement.
- 1280. — Restricting participation by plaintiff.
- 1281. — Evidence.
- 1282. — Trial and judgment.
- 1283. — Costs and fees.
- 1284. Damages.
- 1285. — In general.
- 1286. — Number of “forfeitures”.
- 1287. — Plaintiff’s right to share of award.
- 1288. — Measure of damages.
- 1289. — Double or treble damages.
- 1290. — Particular amounts.
- 1291. Civil penalties.
- 1292. Forfeiture of fraudulent claims.
- 1293. Offenses and prosecutions.
- 1294. — In general.
- 1295. — Elements.
  - (1). In general.
  - (2). Falsity.

**IV. FALSE CLAIMS.(Cont'd)**

- (3). Materiality.
- (4). Intent.
- (5). Agency of United States.
- 1296. — Proceedings.
  - (1). In general.
  - (2). Indictment and information.
  - (3). Evidence.
  - (4). Trial.
- 1297. — Sentence and punishment.

**V. EMPLOYEES, OFFICERS, AND AGENTS.****(A) IN GENERAL.**

- 1301. In general.
- 1302. Appointment and hiring.
- 1303. — In general.
- 1304. — Eligibility.
- 1305. — Qualification.
- 1306. — Probationary period.
- 1307. — Failure to hire.
- 1308. Term and duration; vacancies.
- 1309. Removal or other adverse action.
- 1310. — In general; power to remove.
- 1311. — Grounds.
  - (1). In general.
  - (2). Conduct or misconduct in general.
  - (3). Competence or performance.
  - (4). Disobedience or insubordination.
  - (5). Alcohol or drug use.
  - (6). National security concerns.
  - (7). Economic or budgetary concerns; layoffs.
  - (8). Abolition of position; reorganization or privatization.
- 1312. — Exercise of rights; retaliation.
- 1313. — Reporting or opposing wrongdoing; “whistleblowing”.
- 1314. — Suspension or other discipline.
  - (1). In general; power to suspend or discipline.
  - (2). Grounds.
  - (3). Exercise of rights; retaliation.
  - (4). Reporting or opposing wrongdoing; “whistleblowing”.
- 1315. — Proceedings to impose adverse action.
  - (1). In general.
  - (2). Time.
  - (3). Statement of reasons.

**393. UNITED STATES****V. EMPLOYEES, OFFICERS,  
AND AGENTS.(Cont'd)**

- (4). Notice and hearing.
- (5). Evidence.
- (6). Determination.
- (7). Judicial review or intervention.
- 1316. — Grievances and grievance proceedings.
- 1317. — Actions.
  - (1). In general.
  - (2). Exhaustion of remedies.
- 1318. — Relief.
  - (1). In general.
  - (2). Monetary relief; back pay.
  - (3). Reinstatement.
- 1319. — Costs and fees.
- 1320. Voluntary termination; resignation.
- 1321. — In general.
- 1322. — Constructive discharge.
- 1323. Appointment and tenure of officers.
- 1324. — In general.
- 1325. — Power to appoint.
- 1326. — Eligibility.
- 1327. — Qualification.
- 1328. — Term and duration; vacancies.
- 1329. — Recess appointments.
- 1330. — Removal or other adverse action.
  - (1). In general; power to remove.
  - (2). Grounds.
  - (3). — In general.
  - (4). — Misconduct, malfeasance, or misfeasance.
  - (5). Retaliation; “whistleblowing”.
  - (6). Suspension or other discipline.
  - (7). Proceedings to impose adverse action.
  - (8). Actions and relief.
- 1331. — Voluntary termination; resignation.
- 1332. Promotion, demotion, assignment, and transfer.
- 1333. — In general.
- 1334. — Retaliation; “whistleblowing”.
- 1335. Veterans’ preference.
- 1336. Retirement.
- 1337. Authority and powers.
- 1338. — In general.
- 1339. — Ultra vires acts in general.
- 1340. — Delegation in general.

**V. EMPLOYEES, OFFICERS,  
AND AGENTS.(Cont'd)**

- 1341. — Deputies and assistants.
- 1342. — Ministerial officers.
- 1343. — De facto officers.
- 1344. — Agents and employees.
- 1345. — Special authority or employment.
- 1346. — Disabilities.
- 1347. Duties and performance thereof.
- 1348. — In general.
- 1349. — Custody and care of public funds and other property.
- 1350. — Accounting, audit, and settlement.
- 1351. — Ethics and conflicts of interest in general.
- 1352. — Confidentiality.
- 1353. — Outside activities.
  - (1). In general.
  - (2). Prepublication review.
- 1354. — Former employees, officers, and agents.
- 1355. Independent counsel.
- 1356. — In general.
- 1357. — Authority and powers.
- 1358. — Duties and performance thereof.
- 1359. Immunity of United States from employment claims.

**(B) COMPENSATION.**

- 1361. In general; power to regulate.
- 1362. Form, rate, and amount in general.
- 1363. Salaries.
- 1364. Commissions and fees.
- 1365. Additional compensation; extra services.
- 1366. Overtime compensation.
- 1367. Increase or reduction.
- 1368. Back pay in general.
- 1369. Compensation during absence; time off and leave.
- 1370. Severance pay and benefits.
- 1371. Reimbursement of expenses; indemnification.
- 1372. Deductions and offsets.
- 1373. Allowance, payment, and collection.
- 1374. — In general.
- 1375. — Administrative proceedings.
  - (1). In general.
  - (2). Time for proceedings; limitations.



**393. UNITED STATES****V. EMPLOYEES, OFFICERS,  
AND AGENTS.(Cont'd)**

- (3). Judicial review or intervention.
- 1376. — Actions.
  - (1). In general.
  - (2). Time for proceedings; limitations.
  - (3). Exhaustion of remedies.
  - (4). Pleading.
- 1377. — Evidence.
- 1378. Recovery of payments; recoupment.

**(C) PENSIONS AND BENEFITS.**

- 1381. In general.
- 1382. Eligibility and right to benefits.
- 1383. — In general.
- 1384. — Pensions and retirement benefits.
- 1385. — Deferred compensation.
- 1386. — Health and medical benefits.
- 1387. — Disability benefits.
- 1388. — Death benefits.
- 1389. Funds and contributions.
- 1390. Amount and computation.
- 1391. — In general.
- 1392. — Service credit.
- 1393. Allowance, payment, and collection.
- 1394. — In general.
- 1395. — Administrative proceedings.
  - (1). In general.
  - (2). Time for proceedings; limitations.
  - (3). Judicial review or intervention.
- 1396. — Actions.
  - (1). In general.
  - (2). Time for proceedings; limitations.
  - (3). Exhaustion of remedies.
  - (4). Pleading.
- 1397. — Evidence.
- 1398. Revocation, suspension, or termination.
- 1399. Recovery of payments; recoupment.

**(D) LIABILITIES.****1. IN GENERAL.**

- 1401. In general.
- 1402. Official acts in general.
- 1403. Negligence or misconduct in general.
- 1404. Discretionary acts or functions in general.
- 1405. Privilege or immunity; good faith.
- 1406. — In general; official immunity.

**V. EMPLOYEES, OFFICERS,  
AND AGENTS.(Cont'd)**

- 1407. — Sovereign immunity, and relation of official immunity thereto.
- 1408. — Absolute immunity.
- 1409. — Qualified immunity.
- 1410. Scope of employment; Westfall Act.
- 1411. — In general; substitution of United States as defendant.
- 1412. — Certification or other determination.
- 1413. — Judicial review.
- 1414. Particular cases and contexts.
- 1415. — In general.
- 1416. — Particular employees, officers, and agents.
  - (1). In general.
  - (2). Privilege or immunity; good faith.
  - (3). Scope of employment; Westfall Act.
- 1417. — Particular torts.
  - (1). In general.
  - (2). Privilege or immunity; good faith.
  - (3). Scope of employment; Westfall Act.
- 1418. — Medical malpractice claims.
  - (1). In general.
  - (2). Privilege or immunity; good faith.
  - (3). Scope of employment; Westfall Act.
- 1419. — Defamation, disclosure, and privacy claims.
  - (1). In general.
  - (2). Privilege or immunity; good faith.
  - (3). Scope of employment; Westfall Act.
- 1420. — Criminal law enforcement and investigation.
  - (1). In general.
  - (2). Privilege or immunity; good faith.
  - (3). Scope of employment; Westfall Act.
- 1421. — Employment practices.
  - (1). In general.
  - (2). Privilege or immunity; good faith.
  - (3). Scope of employment; Westfall Act.
- 1422. Existence and exclusivity of other remedies.
- 1423. — In general.

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AND AGENTS.(Cont'd)**

- 1424. — Federal Tort Claims Act.
- 1425. — Other particular remedies.
- 1426. — Exhaustion of remedies.
- 1427. Persons liable.
- 1428. — In general; individual or official capacity.
- 1429. — Personal involvement; vicarious liability and respondeat superior.
- 1430. Private individuals or entities; contractors.
- 1431. — In general.
- 1432. — Privilege or immunity; good faith.
- 1433. Actions.
- 1434. — In general.
- 1435. — Jurisdiction and venue.
- 1436. — Time for proceedings; limitations.
- 1437. — Parties; standing.
- 1438. — Process.
- 1439. — Pleading.
- 1440. — Evidence.
- 1441. — Trial, judgment, and relief.
- 1442. — Costs and fees.
- 1443. Liabilities on official bonds.
- 1444. — In general; nature of liability.
- 1445. — Discharge of sureties; rights and remedies of sureties.
- 1446. — Acts constituting breach of bond; accrual of liability.
- 1447. — Extent of liability.
- 1448. — Summary remedies.
- 1449. — Actions.

**2. CONSTITUTIONAL VIOLATIONS;  
BIVENS CLAIMS.**

- 1451. In general.
- 1452. Particular rights, acts, and claims.
- 1453. — In general.
- 1454. — Education.
- 1455. — Criminal law enforcement and investigation.
  - (1). In general.
  - (2). Searches, seizures, and forfeitures.
  - (3). Arrest and detention in general.
  - (4). Use of force.
  - (5). Search incident to arrest.
  - (6). Pretrial detention.

**V. EMPLOYEES, OFFICERS,  
AND AGENTS.(Cont'd)**

- (7). Criminal prosecutions.
- 1456. — Prisons.
- 1457. — Internal revenue.
- 1458. — Aliens, immigration, and customs.
- 1459. — War, national emergency, and armed services.
- 1460. — Employment practices.
- 1461. Existence and exclusivity of other remedies.
- 1462. — In general.
- 1463. — Particular remedies.
- 1464. — Exhaustion of remedies.
- 1465. Color of law.
- 1466. Persons liable.
- 1467. — In general; individual or official capacity.
- 1468. — Personal involvement; vicarious liability and respondeat superior.
- 1469. Privilege or immunity; good faith.
- 1470. — In general.
- 1471. — Absolute immunity in general.
- 1472. — Qualified immunity in general.
- 1473. — Particular actors and situations in general.
- 1474. — Education.
- 1475. — Criminal law enforcement and investigation.
  - (1). In general.
  - (2). Searches, seizures, and forfeitures.
  - (3). Arrest and detention in general.
  - (4). Use of force.
  - (5). Search incident to arrest.
  - (6). Pretrial detention.
  - (7). Criminal prosecutions.
- 1476. — Prisons.
- 1477. — Internal revenue.
- 1478. — Aliens, immigration, and customs.
- 1479. — War, national emergency, and armed services.
- 1480. — Employment practices.
- 1481. — Judges, courts, and judicial officers; judicial immunity.
- 1482. — Attorneys.
- 1483. — Marshals.
- 1484. Private individuals or entities; contractors.
- 1485. — In general; color of law.

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AND AGENTS.(Cont'd)**

- 1486. — Privilege or immunity; good faith.
- 1487. Actions.
- 1488. — In general.
- 1489. — Jurisdiction and venue.
- 1490. — Time for proceedings; limitations.
- 1491. — Parties; standing.
- 1492. — Process.
- 1493. — Pleading.
- 1494. — Evidence.
- 1495. — Trial and judgment.
- 1496. — Damages or other relief.
  - (1). In general.
  - (2). Punitive damages.
- 1497. — Costs and fees.

**(E) CRIMINAL RESPONSIBILITY.**

- 1501. In general.
- 1502. Offenses.
- 1503. — In general.
- 1504. — Conflict of interest.
- 1505. — Improper income supplementation.
- 1506. — Disclosure of confidential information.
- 1507. Prosecution and punishment.
- 1508. Liability under state law; immunity.

**(F) CONGRESSIONAL EMPLOYEES,  
OFFICERS, AND AGENTS.**

- 1511. In general.
- 1512. Removal or other adverse employment action.
- 1513. Compensation.
- 1514. Pensions and benefits.
- 1515. Liabilities.
- 1516. — In general.
- 1517. — Constitutional violations; Bivens claims.
- 1518. Criminal responsibility.

**VI. CORPORATIONS, SPECIAL INSTRUMENTALITIES,  
AND SIMILAR ENTITIES CONTROLLED BY UNITED STATES.**

- 1521. In general.
- 1522. Nonappropriated fund instrumentalities in general.

**VI. CORPORATIONS, SPECIAL INSTRUMENTALITIES,  
AND SIMILAR ENTITIES CONTROLLED BY UNITED STATES.(Cont'd)**

- 1523. Independent establishments in general.
- 1524. Powers, liabilities, and activities in general.
- 1525. Particular entities.
- 1526. — In general.
- 1527. — Trade, business, finance, and economic development in general.
- 1528. — Small business investment companies.
- 1529. — Housing and home financing.
- 1530. — Maritime matters.
- 1531. — Museums, research, and culture.
- 1532. — Tennessee Valley Authority.
- 1533. Power to sue and be sued; immunity.
- 1534. — In general.
- 1535. — Particular entities.
- 1536. — Tort claims.
- 1537. Actions.
- 1538. — In general.
- 1539. — Right of action; nature and form of remedy.
- 1540. — Jurisdiction and venue.
- 1541. — Time for proceedings; limitations.
- 1542. — Parties; standing.
- 1543. — Process.
- 1544. — Pleading.
- 1545. — Evidence.
- 1546. — Trial, judgment, and relief.
  - (1). In general.
  - (2). Questions of law or fact.
  - (3). Equitable relief; injunctions.
- 1547. — Costs and fees.
- 1548. Insolvency, receivership, and liquidation.
- 1549. — In general.
- 1550. — Small business investment companies.
- 1551. — Housing and home financing entities.
- 1552. — Other particular entities.
- 1553. — Actions and proceedings.
- 1554. Employees, officers, and agents.
- 1555. — In general.
- 1556. — Removal or other adverse employment action.
- 1557. — Compensation.

**393. UNITED STATES****VI. CORPORATIONS, SPECIAL INSTRUMENTALITIES, AND SIMILAR ENTITIES CONTROLLED BY UNITED STATES.**(Cont'd)

1558. — Pensions and benefits.
1559. — Liabilities.
- (1). In general.
- (2). Constitutional violations; Bivens claims.
1560. — Criminal responsibility.

**394. UNITED STATES MAGISTRATE JUDGES****SUBJECTS INCLUDED**

United States Magistrate Judges (formerly United States Magistrates and United States Commissioners)

Appointment, qualification, tenure, and removal of such judges and their predecessors

Their compensation

Their jurisdiction, power, authority, status, and liability

Reference, delegation, and designation of matters to them, including their designation as special masters

Proceedings before them in general

Reports and recommendations by them and objections thereto

Review of their determinations by the district court and in the Court of Appeals

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Bail, see BAIL

Commissioners in admiralty, see ADMIRALTY

Commissioners in chancery, see EQUITY

Conclusiveness of rulings by, see JUDGMENT

Referees, see FEDERAL CIVIL PROCEDURE, REFERENCE

Reference of bankruptcy matters and bankruptcy appeals to magistrates, see BANKRUPTCY

Searches and seizures, see SEARCHES AND SEIZURES

State and local commissioners and magistrates, see COURT COMMISSIONERS, JUSTICES OF THE PEACE, REFERENCE

Substantive rulings in particular proceedings by and before commissioners, magistrates, or magistrate judges, see ARREST, CONTEMPT, CRIMINAL LAW, and other specific topics

- I. IN GENERAL, ¶101–120.
- II. JURISDICTION, POWERS, AND AUTHORITY TO ACT, PRESIDE, OR RULE, ¶121–200.
- (A) IN GENERAL, ¶121–130.
- (B) PARTICULAR CASES, CONTEXTS, AND RULINGS, ¶131–200.
- III. PROCEEDINGS BEFORE MAGISTRATE JUDGES, ¶201–210.
- IV. REVIEW OR SUPERVISION BY DISTRICT COURT, ¶211–260.
- V. REVIEW BY COURT OF APPEALS; DIRECT APPEAL, ¶261–275.

**I. IN GENERAL.**

101. In general.
102. Appointment, eligibility, and qualification.
103. Term, tenure, and retirement.
104. Removal or termination.
105. Bias; recusal.
106. Discipline.
107. Liabilities.
108. — In general.
109. — Immunity.
110. Disabilities.
111. Compensation.
112. — In general.
113. — Issuing warrants and other orders, drawing complaints, and administering oaths.
114. — Docket fees; fees for entering returns or filing papers.
115. — Copies of papers.
116. — Hearings.
117. Status.
118. — In general.
119. — Constitutional status.

## 394. UNITED STATES MAGISTRATE JUDGES

II. JURISDICTION, POWERS,  
AND AUTHORITY TO ACT,  
PRESIDE, OR RULE.

## (A) IN GENERAL.

- 121. In general.
- 122. Reference, designation, or delegation.
- 123. — In general.
- 124. — Objections and proceedings thereon.
- 125. — Withdrawal or vacation.
- 126. Consent.
- 127. — In general.
- 128. — Objections and proceedings thereon.
- 129. — Withdrawal or vacation.

(B) PARTICULAR CASES, CONTEXTS,  
AND RULINGS.

- 131. In general.
- 132. Nature of case, proceeding, dispute, or issue in general.
- 133. Pretrial and other preliminary matters in general.
- 134. Hearing, trial, findings, and determination in general.
- 135. Dispositive orders, rulings on merits, and dismissal in general.
- 136. Jurisdiction and venue.
- 137. Parties, process, and pleading.
- 138. — In general.
- 139. — Answer and subsequent pleadings.
- 140. — Amendment of pleadings.
- 141. — Dismissal.
- 142. — Judgment on pleadings.
- 143. — Intervention.
- 144. — Class actions.
- 145. Discovery.
- 146. Consolidation, severance, continuance, and stay.
- 147. Jury.
- 148. — In general.
- 149. — Selection and impaneling of jurors; voir dire.
- 150. Evidence and witnesses.
- 151. — In general.
- 152. — Evidentiary hearing.
- 153. Expert evidence and witnesses.
- 154. Judgment.  
*Judgment on pleadings, see ¶142.*
- 155. — In general.

II. JURISDICTION, POWERS, AND  
AUTHORITY TO ACT, PRESIDE,  
OR RULE.(Cont'd)

- 156. — Default judgment and opening thereof.
- 157. — Summary judgment.
- 158. — Enforcement of judgment.
- 159. Proceedings after trial or judgment.
- 160. Remand.
- 161. Remedies and relief.
- 162. — In general.
- 163. — Injunctive relief; temporary restraining order.
- 164. Costs and attorney fees.
- 165. Indigent parties; proceedings in forma pauperis.
- 166. Sanctions.
- 167. — In general.
- 168. — Discovery sanctions.
- 169. Compromise and settlement.
- 170. — In general.
- 171. — Class actions.
- 172. Criminal matters.
- 173. — In general.
- 174. — Nature of offense, proceeding, dispute, or issue in general.
- 175. — Pretrial and other preliminary matters in general.
- 176. — Hearing, trial, findings, and determination in general.
- 177. — Dispositive orders, rulings on merits, and dismissal in general.
- 178. — Arrest and detention.
- 179. — Indictment, information, or complaint.
- 180. — Arraignment and plea.
- 181. — Jury.
  - (1). In general.
  - (2). Selection and impaneling of jurors; voir dire.
- 182. — Evidence and witnesses.
- 183. — Expert evidence and witnesses.
- 184. — Sentencing and punishment.
- 185. — Criminal records; expungement.
- 186. Extraordinary relief; writs.
- 187. — In general.
- 188. — Habeas corpus.
- 189. Transfer of prisoners; extradition and detainers.
- 190. Contempt.

**394. UNITED STATES MAGISTRATE JUDGES****III. PROCEEDINGS BEFORE  
MAGISTRATE JUDGES.**

- 201. In general.
- 202. Determination and disposition.
- 203. — In general.
- 204. — Report and recommendation.

**IV. REVIEW OR SUPERVISION  
BY DISTRICT COURT.**

- 211. In general.
- 212. Objections to report and recommendation.
- 213. — In general.
- 214. — Notice of right to object; requisites and sufficiency.
- 215. — Time for objecting; extension.
- 216. Procedure and proceedings for review or on appeal.
- 217. — In general.
- 218. — Jurisdiction and authority of district court on review or appeal.
- 219. — Sua sponte review by district court.
- 220. — Persons entitled to seek review; parties; standing.
- 221. — Estoppel to allege error; invited error.
- 222. — Time issues in cases not involving objections to reports and recommendations.
- 223. — Effect of review by or appeal to district court.
- 224. — Supersedeas or stay of proceedings pending review by or appeal to district court.
- 225. Decisions reviewable.
- 226. — In general.
- 227. — Mootness.
- 228. Presentation and reservation of grounds for review; plain error review.
- 229. — In general.
- 230. — Failure to object; uncontested findings.
  - (1). In general.
  - (2). Waiver of right to review in general.
  - (3). Frivolous, conclusive, or general objections.
  - (4). Plain error, clear error, and manifest injustice review.

**IV. REVIEW OR SUPERVISION BY  
DISTRICT COURT.(Cont'd)**

- 231. — Assertion of issues, theories, or claims for first time in objections.
- 232. Record and supplementation thereof; briefs; transcript.
- 233. Hearing.
- 234. Scope and extent of review.
- 235. — In general.
- 236. — Matters, evidence, or questions considered.
- 237. — Standard of review.
  - (1). In general.
  - (2). Deference in general.
  - (3). De novo review in general.
  - (4). Discretion in general.
  - (5). — In general.
  - (6). — Discretion of district court to choose standard of review.
  - (7). — Abuse of discretion review in general.
  - (8). Clear error, manifest error, or contrary to law in general.
  - (9). Particular cases, contexts, and questions.
  - (10). — In general.
  - (11). — Procedural matters.
  - (12). — Remedial matters.
  - (13). — Substantive matters.
- 238. Presumptions and burdens.
- 239. — In general.
- 240. — Presumptive weight of magistrate judge's recommendation.
- 241. — Particular cases, contexts, and questions.
- 242. Harmless or reversible error.
- 243. — In general.
- 244. — Particular cases, contexts, and questions.
- 245. Waiver of error before district court.
- 246. Determination and disposition.
- 247. — In general.
- 248. — Affirmance.
- 249. — Modification.
- 250. — Reversal or vacation.
- 251. — Rendering judgment; dismissing claims or parties.
- 252. — Remand, recommittal, or referral back to magistrate judge.
- 253. — Reconsideration.

**395. UNITED STATES MARSHALS**

**V. REVIEW BY COURT OF APPEALS;  
DIRECT APPEAL.**

- 261. In general.
- 262. Objections to report and recommendation.
- 263. Procedure and proceedings for review or on appeal.
- 264. Decisions reviewable.
- 265. Presentation and reservation of grounds for review; plain error review.
- 266. Record and supplementation thereof; briefs; transcript.
- 267. Hearing.
- 268. Scope and extent of review.
- 269. — In general.
- 270. — Matters, evidence, or questions considered.
- 271. — Standard of review.
  - (1). In general.
  - (2). De novo review in general.
  - (3). Abuse of discretion review in general.
  - (4). Clear error review in general.
  - (5). Particular cases, contexts, and questions.
- 272. Presumptions and burdens.
- 273. Harmless or reversible error.
- 274. Waiver of error before appellate court.
- 275. Determination and disposition.

**395. UNITED STATES MARSHALS**

**SUBJECTS INCLUDED**

Marshals of the United States, and their deputies, assistants, and employees  
Their appointment, qualification, and tenure of office or employment  
Their rights, powers, duties, and liabilities

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Air marshals, see AVIATION  
Bailiffs and similar court officials, see COURTS II(B)

County sheriffs and constables, see SHERIFFS AND CONSTABLES  
District of Columbia, marshal of, see DISTRICT OF COLUMBIA  
Liability for constitutional violations, see UNITED STATES V(D)2  
Local marshals and police officers, see MUNICIPAL CORPORATIONS  
Particular writs and specific duties, see ADMIRALTY, BANKRUPTCY, INTERNAL REVENUE, and other specific topics  
  
101. In general.  
102. Appointment, qualification, and tenure.  
103. — In general.  
104. — Deputies, assistants, and employees in general.  
105. — Removal or other adverse action in general.  
106. — Exercise of rights; retaliation.  
107. — Reporting or opposing wrongdoing; “whistleblowing”.  
108. — Suspension or other discipline.  
109. — Promotion, demotion, assignment, and transfer.  
110. — Voluntary termination, resignation, and retirement.  
111. — Actions and proceedings.

- (1). In general.
- (2). Exclusive and concurrent remedies; exhaustion.
- (3). Parties, process, and pleading.
- (4). Evidence, trial, and judgment.
- (5). Relief; costs and fees.

  
112. Authority, powers, and duties.  
113. — In general.  
114. — Security and law enforcement.  
115. — Arrest; custody and control of prisoners.  
116. Compensation.  
117. — In general.  
118. — Particular services or activities.

- (1). In general.
- (2). Service of process or other papers.
- (3). Custody and disposition of property; sale.
- (4). Selection and summoning of jurors.
- (5). Court attendance.
- (6). Security and law enforcement.

**395. UNITED STATES MARSHALS**

- (7). Arrest; custody and control of prisoners.
- 119. — Overtime compensation.
- 120. — Expenses and losses.
  - (1). In general.
  - (2). Mileage and travel expenses.
  - (3). Indemnification.
- 121. — Allowance, payment, and collection; actions and proceedings.
- 122. — Recovery of payments; recoupment.
- 123. Pensions and benefits.
- 124. Liabilities.
  - Liability for constitutional violations, see UNITED STATES V(D)2.*
- 125. — In general.
- 126. — Particular cases and contexts.
  - (1). In general.
  - (2). Security and law enforcement.
  - (3). Arrest; custody and control of prisoners.
- 127. — Privilege or immunity; good faith.
  - (1). In general.
  - (2). Security and law enforcement.
  - (3). Arrest; custody and control of prisoners.
- 128. — Actions and proceedings.
  - (1). In general.
  - (2). Exclusive and concurrent remedies; exhaustion.
  - (3). Parties, process, and pleading.
  - (4). Evidence, trial, and judgment.
  - (5). Relief; costs and fees.
- 129. Liabilities on official bonds.
- 130. Criminal responsibility.

**396. UNLAWFUL ASSEMBLY****SUBJECTS INCLUDED**

Meeting of a number of persons with intent mutually to assist one another in execution of a common purpose by the use of force or other unlawful intent, and attempting or threatening such use of force, but without actually putting their unlawful design into execution

Nature and extent of criminal responsibility therefor, and grounds of defense

Prosecution and punishment of such acts as public offenses

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Right to assemble peaceably, see CONSTITUTIONAL LAW XIV

Riotous execution of common purpose of unlawful assembly, see RIOT

- 1. Nature and elements of offenses.
- 2. Indictment or information.
- 3. Evidence.
- 4. Trial and review.

**396A. URBAN RAILROADS****SUBJECTS INCLUDED**

Construction, maintenance, regulation, and operation of fixed rail transit systems in cities on the surface or elevated, depressed, or underground

Rights, duties, and liabilities as to the public and as to individuals, in respect of the management and operation of systems, otherwise than in the capacity of employer or carrier

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Carriers, regulation in general, see CARRIERS

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, power, and exercise thereof, see EMINENT DOMAIN

Employers, systems as, see LABOR AND EMPLOYMENT

Motor buses and similar carriers, see AUTOMOBILES, CARRIERS

Municipalities' powers to grant and regulate franchises and rights of way, and to aid urban railroads, see MUNICIPAL CORPORATIONS

Passengers, carriage of, see CARRIERS



**398. USURY**

Railroads in general, regulation, see RAILROADS

Taxation of urban railroads, see TAXATION

**I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE,** ¶1–19.

**II. REGULATION AND OPERATION,** ¶20–31.

**I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE.**

1. In general.  
*Injunctive relief, see INJUNCTION IV(P).*
2. Constitutional and statutory provisions.
3. Determination as to necessity, location, and mode of construction.
4. Establishment or acquisition by public authorities.
5. Location.
6. Franchises or privileges; property rights.
7. Construction and maintenance.
- 7.1. — In general.
8. — Contracts.

**II. REGULATION AND OPERATION.**

20. In general.
21. Public operation or control.
22. Statutory or municipal regulations.
23. Injuries from operation.
- 23.1. — In general.
24. — Collision.
25. — Injuries to persons on or near tracks.
26. — Contributory negligence.
27. — Proximate cause.
28. — Injuries avoidable notwithstanding contributory negligence.
29. — Notice of claim for injury.
30. — Actions.
31. Offenses and penalties.

**398. USURY****SUBJECTS INCLUDED**

Compensation for use or forbearance of money at a rate greater than allowed by law

The reserving, taking, or paying such unlawful rate

Validity and effect of agreements therefor

Pleading usury and proof thereof as a defense

Civil and criminal liabilities and remedies for violations of usury laws

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Rate of interest allowed by law in general, see INTEREST

Rate of interest allowed by law on particular classes of transactions, see FINANCE, BANKING, AND CREDIT and other specific topics

**I. USURIOUS CONTRACTS AND TRANSACTIONS,** ¶1–133.

(A) NATURE AND VALIDITY, ¶1–88.

(B) RIGHTS AND REMEDIES OF PARTIES, ¶89–125.

(C) RIGHTS AND REMEDIES OF THIRD PERSONS, ¶126–133.

**II. PENALTIES AND FORFEITURES,** ¶134–148.

**III. CRIMINAL RESPONSIBILITY,** ¶149.

**I. USURIOUS CONTRACTS AND TRANSACTIONS.**

**(A) NATURE AND VALIDITY.**

1. Nature of usury in general.
2. What law governs.
  - (1). In general.
  - (2). Place of making contract.
  - (3). Contract secured by mortgage or other lien.
  - (4). Contracts to be performed in place other than where made.
  - (5). Place of payment or enforcement.
3. Constitutional and statutory provisions.
4. — In general.
5. — Validity of usury laws.
6. — Construction and operation in general.
7. — Retroactive operation in general.
8. — Amendment and repeal.
9. — Effect on pre-existing contracts of change in statutory rate of interest.
10. Elements of usury.
11. — In general.

**398. USURY****I. USURIOUS CONTRACTS AND  
TRANSACTIONS.(Cont'd)**

12. — Intent, knowledge, and mutual assent of parties.
13. — Loan or forbearance.
14. — Agreement for payment of principal.
15. — Reservation, taking, or payment of or agreement for excessive interest.
16. Nature and subject-matter of transaction in general.
17. Loans or advances of money.
18. — In general.
19. — Depreciated currency or funds.
20. — Repayment in medium other than money.
21. Bills, notes, and other instruments for payment of money.
22. — In general.
23. — Usurious transactions between original parties.
24. — Consideration and legal inception before transfer.
25. — Usurious transfers in general.
26. — Discounts.
27. Forbearance or suspension of legal remedy or process.
28. Loans or sales of credit.
29. Loans of personal property.
30. Sales or exchanges of property.
31. — In general.
32. — Credit, deferred payments, and installments of price.
33. Leases or agreements for hiring of property.
34. Mortgages.
35. Pledges and other deposits as security.
36. Contracts and transactions involving hazard or contingency.
- 36.1. — In general.
37. — Hazard of principal in general.
38. — Partnership agreements.
39. — Payment of principal subject to contingency in general.
40. — Contracts for annuities.
41. — Interest subject to condition.
42. Rate and amount of interest in general.
43. Interest from prior date.
44. Interest in advance.
45. — In general.

**I. USURIOUS CONTRACTS AND  
TRANSACTIONS.(Cont'd)**

46. — Discount of bills and notes.
47. Interest payable at periods less than a year, and rests in computation.
48. Interest after maturity of debt.
49. Compound interest.
50. Mode of computation of interest.
51. Use of interest tables.
52. Contemporaneous collateral agreements in general.
53. Compensation for services or expenses or losses incurred by lender.
54. Commission or bonus to agent, broker, or other third person.
55. — In general.
56. — Agent or other representative of lender.
57. — Agent or other representative of borrower.
58. Commissions of factor or consignee making advances.
59. Stipulations as to insurance.
60. Stipulations as to payment of taxes.
61. Stipulations as to liquidated damages on breach of contract.
62. Stipulations as to attorney fees on default in payment.
63. Agreements to assume, secure, or pay other debt.
64. Subsequent collateral agreements in general.
65. Extension of time of payment.
66. Renewal of bill, note, or other obligation.
67. Usurious contract as consideration for new promise.
68. Agreements to assume, secure, or pay usurious debt.
69. Loans to pay usurious debts.
70. Custom or usage affecting contract or transaction.
72. Construction of contracts as to usury.
74. Effect of usury.
75. — In general.
76. — Validity of contract or indebtedness.
77. — Contract or debt originally valid.
78. — Interest.
79. — Excessive interest.
80. — Securities.
81. — Executed contracts.

**398. USURY****I. USURIOUS CONTRACTS AND TRANSACTIONS.(Cont'd)**

- 82. Persons who may take advantage of existence of usury in general.
- 83. Defense of usury by corporations.
- 84. Usury in issue and sale of municipal securities.
- 85. Persons affected by usury in general.
- 86. Usury in transactions through agents.
- 87. Usury in partnership transactions.
- 88. Purging contract of usury.

**(B) RIGHTS AND REMEDIES OF PARTIES.**

- 89. Relative rights of parties to contract or transaction in general.
- 90. Rescission or avoidance of contract or conveyance by act of party.
- 91. Equitable relief.
- 92. — In general.
- 93. — Cancellation or reformation of written instrument.
- 94. — Restraining or refusing enforcement of obligation or security.
- 95. — Tender or payment of amount actually received or due.
- 96. Enforcement of usurious contract or security.
- 97. — In general.
- 98. — Amount actually loaned, advanced, or paid.
- 99. Usury as a defense.
- 100. Application of payments of usury.
  - (1). In general.
  - (2). Time of payment.
- 101. Set-off and counterclaim of usury paid.
- 102. Recovery of usury paid.
  - (1). In general.
  - (2). Voluntary payments.
  - (3). Mode and sufficiency of payment as affecting recovery in general.
  - (4). Payment of judgment embracing usury.
  - (5). Persons liable.
  - (6). Form of remedy.
  - (7). Extent of recovery.
- 103. Estoppel to take advantage of usury.
- 104. Waiver or release of usury in general.
- 105. Effect of account stated.
- 106. Effect of compromise or settlement.

**I. USURIOUS CONTRACTS AND TRANSACTIONS.(Cont'd)**

- 107. Effect of judgment in action on contract or security.
- 108. Jurisdiction and venue of actions.
- 109. Time to sue, limitations, and laches.  
*See also LIMITATION OF ACTIONS.*
- 110. Parties to actions.
- 111. Pleading.
  - (1). In general.
  - (2). Actions and proceedings to enforce usurious contract or security.
  - (3). Actions to recover usury paid.
  - (4). Equitable actions for relief against usury.
  - (5). Set-off or counterclaim of usury paid.
- 112. Evidence.
- 112.1. — In general.
- 113. — Presumptions and burden of proof.
- 114. — Admissibility in general.
- 115. — Parol evidence.
- 116. — Competency of parties as witnesses.
- 117. — Weight and sufficiency.
- 119. Questions for jury.
- 120. Instructions.
- 121. Verdict and findings.
- 122. Judgment.
- 123. Execution and enforcement of judgment.
- 124. Appeal and error.
- 125. Costs.

**(C) RIGHTS AND REMEDIES OF THIRD PERSONS.**

- 126. Personal nature of right to relief or defense.
- 127. Privity with parties to usury in general.
- 128. Assignees of usurious contract or security.
- 129. Assignees of usurious borrower or other debtor.
- 130. Subsequent purchasers of incumbered property.
- 131. Subsequent incumbrancers.
- 132. Creditors of usurious borrower or incumbrancer.
- 133. Actions by or against third persons.

**398. USURY****II. PENALTIES AND FORFEITURES.**

- 134. Nature and scope in general.
- 135. What law governs.
- 136. Constitutional and statutory provisions.
- 137. Grounds of penalties.
- 138. Amount and extent of penalties.
- 139. Defenses to penalties.
- 140. Persons entitled to enforce penalties.
- 141. Persons liable for penalties.
- 142. Actions for penalties.
  - (1). In general.
  - (2). Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*
  - (3). Pleading.
  - (4). Evidence.
  - (5). Verdict and judgment.
- 143. Set-off and counterclaim of penalties.
- 144. Grounds of forfeiture in general.
- 145. Forfeiture of principal of indebtedness.
- 146. Forfeiture of interest.
- 147. Enforcement and effect of forfeitures.
- 148. Disposition of proceeds.

**III. CRIMINAL RESPONSIBILITY.**

- 149. In general.
- 150. Prosecution and punishment.

**399. VAGRANCY****SUBJECTS INCLUDED**

An idle, wandering, disorderly, or criminal mode or course of life, punishable as such, independently of any specific offense committed

Prosecution and punishment thereof

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Children, vagrancy and delinquency, see INFANTS

- 1. Nature and elements of offenses.
- 2. Indictment or information.
- 3. Evidence.
- 4. Trial and review.

- 5. Sentence and punishment.
- 6. Prevention or suppression of vagrancy.

**400. VENDOR AND PURCHASER****SUBJECTS INCLUDED**

Contracts for transfer of ownership of real property for a price in money or its equivalent, executory or executed

Rights and liabilities of parties to such contracts in general

Remedies relating thereto

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Assignees for benefit of creditors, receivers and the like, sales by, see CREDITORS' REMEDIES *§* 1172, RECEIVERS

Cancellation, surrender, etc. of contracts, see CANCELLATION OF INSTRUMENTS

Compelling performance of contracts, see SPECIFIC PERFORMANCE

Conveyances and merger of contracts therein, see DEEDS

Exchange or barter, transfers by way of, see EXCHANGE OF PROPERTY

Judgments, orders and decrees, sales under, see JUDICIAL SALES, EXECUTORS AND ADMINISTRATORS, PARTITION, and other specific topics

Judicial process, sales under, see CREDITORS' REMEDIES and other specific topics

Mortgages, enforcement by sale, see MORTGAGES AND DEEDS OF TRUST

Particular classes of persons, sales by or to, see ALIENS, IMMIGRATION, AND CITIZENSHIP, INFANTS, and other specific topics

Particular persons in fiduciary or representative capacity, sales by or to, see EXECUTORS AND ADMINISTRATORS, PRINCIPAL AND AGENT, and other specific topics

Particular species of property, sales of, see PUBLIC LANDS, MINES AND MINER-

**400. VENDOR AND PURCHASER**

ALS, HOMESTEAD, and other specific topics

Personal property, sale of, see SALES

Powers, sales in execution of in general, see POWERS

Reformation of contracts, see REFORMATION OF INSTRUMENTS

Statute of frauds, requirements of, see FRAUDS, STATUTE OF

Subrogation to lien or other rights of vendor, see SUBROGATION

Tax sales, see TAXATION

**I. REQUISITES AND VALIDITY OF CONTRACT, ¶1–45.**

**II. CONSTRUCTION AND OPERATION OF CONTRACT, ¶46–81.**

**III. MODIFICATION OR RESCISSION OF CONTRACT, ¶82–127.**

(A) BY AGREEMENT OF PARTIES, ¶82–87.

(B) RESCISSION BY VENDOR, ¶88–105.

(C) RESCISSION BY PURCHASER, ¶106–127.

**IV. PERFORMANCE OF CONTRACT, ¶128–187.**

(A) TITLE AND ESTATE OF VENDOR, ¶128–144.

(B) CONVEYANCE, ¶145–159.

(C) QUANTITY OF LAND AND APPURTENANCES, ¶160–167.

(D) PAYMENT OF PURCHASE MONEY, ¶168–187.

**V. RIGHTS AND LIABILITIES OF PARTIES, ¶188–245.**

(A) AS TO EACH OTHER, ¶188–209.

(B) AS TO THIRD PERSONS IN GENERAL, ¶210–219.

(C) BONA FIDE PURCHASERS, ¶220–245.

**VI. REMEDIES OF VENDOR, ¶246–331.**

(A) LIEN AND RECOVERY OF LAND, ¶246–300.

(B) ACTIONS FOR PURCHASE MONEY, ¶301–320.

(C) ACTIONS FOR DAMAGES, ¶321–333.

**VII. REMEDIES OF PURCHASER, ¶334–353.**

(A) RECOVERY OF PURCHASE MONEY PAID, ¶334–341.

(B) ACTIONS FOR BREACH OF CONTRACT, ¶342–353.

**I. REQUISITES AND VALIDITY OF CONTRACT.**

1. Nature of contract for sale of real property.

2. What law governs.

3. Sale distinguished from other transactions.

(1). In general.

(2). Lease or license.

(3). Power of sale or agency.

(4). Option or executory contract.

4. Real property which may be subject of sale.

4.1. — In general.

5. — Nature of property.

6. — Estate or interest of vendor in general.

7. — Particular estates and interests.

8. — After-acquired property.

9. Parties.

9.1. — In general.

10. — Capacity and right to sell and convey.

11. — Participation in and relation to transaction.

12. Consideration.

12.1. — In general.

13. — For sale.

14. — For purchase.

15. — Want or failure of consideration.

16. Offer to sell, and acceptance thereof.

(1). In general.

(2). Qualified or conditional offer.

(3). Time for acceptance.

(4). Qualified or conditional acceptance.

17. Offer to purchase, and acceptance thereof.

18. Options, preemptive rights, and exercise thereof.

*Excludes tenant's option to purchase leased premises, see LANDLORD AND TENANT ¶92.*

(.5). In general.

(1). Requisites and validity.

(2). Extension or renewal.

(3). Exercise.

(4). Revocation, rescission, or other termination.

19. Oral contracts.

20. Written contracts.

20.1. — In general.

**400. VENDOR AND PURCHASER****I. REQUISITES AND VALIDITY  
OF CONTRACT.(Cont'd)**

- 21. — Form and contents.
- 22. — Description of property.
- 23. — Execution.
- 24. — Acknowledgment.
- 25. — Delivery.
- 26. — Recording and registration.
- 27. Bonds for title or to convey.
- 28. Contracts by correspondence.
- 29. Implied agreements.
- 30. Validity of assent in general.
- 31. Mistake.
- 32. Misrepresentation and fraud by vendor.
- 33. — In general.
- 34. — Quantity, boundaries, and location.
- 35. — Title, estate, or interest.
- 36. — Quality or value.
  - (1). In general.
  - (2). Quality or condition.
- 37. — Application of doctrine of caveat emptor.
  - (1). In general.
  - (2). Misrepresentation as to quantity, boundaries, or location.
  - (3). Misrepresentation as to title.
  - (4). Misrepresentation as to condition, quality, or value.
  - (5). Knowledge or intent of vendor.
  - (6). Materiality of misrepresentation.
  - (7). Silence or concealment.
- 38. Misrepresentation and fraud by purchaser.
- 39. Illegality.
- 41. Estoppel or waiver as to defects or objections.
- 42. — In general.
- 43. — Ratification of voidable contract.
  - (1). In general.
  - (2). Taking and holding possession.
- 44. Evidence.
- 45. Questions for jury.

**II. CONSTRUCTION AND OPERATION  
OF CONTRACT.**

- 46. Application of general rules of construction.
- 47. What law governs.
- 48. Place and time of making contract.
- 49. Provisions of written contracts in general.

**II. CONSTRUCTION AND OPERATION  
OF CONTRACT.(Cont'd)**

- 50. Construing instruments together.
- 51. Extrinsic circumstances.
- 52. Operation of contract in general.
- 53. Executory or executed contracts.
- 54. Effect of executory contract on title to property.
 

*Equitable conversion, see EQUITABLE CONVERSION*  $\S$ 109.
- 55. Entire or severable contracts.
- 56. Alternative stipulations.
- 57. Options.
- 58. Dependent or independent stipulations.
- 59. Construction as to parties.
- 60. Subject-matter.
- 60.1. — In general.
- 61. — Description of property in general.
- 62. — Description of estate or interest.
- 63. — Particular description.
- 64. — References to maps, plats, other instruments, or records.
- 65. — Quantity or extent of land.
  - (1). In general.
  - (2). Sale by the acre or in gross.
- 66. — After-acquired property.
- 67. — Appurtenances.
- 68. — Exceptions and reservations.
- 69. Purchase money.
- 69.1. — In general.
- 70. — Amount in general.
- 71. — Sale at price for tract or lot.
- 72. — Sale at price per acre or foot.
- 73. Place of performance and payment.
- 74. Time of performance and payment.
- 75. — In general.
- 76. — Concurrent acts.
- 77. — Term of credit, and deferred payments.
- 78. — Time as of the essence of the contract.
- 79. Conditions and provisos.
- 80. Evidence to aid construction.
- 81. Questions for jury.

**III. MODIFICATION OR RESCISSION  
OF CONTRACT.****(A) BY AGREEMENT OF PARTIES.**

- 82. Modification by subsequent agreement.
- 83. Merger in subsequent contract.

**400. VENDOR AND PURCHASER****III. MODIFICATION OR RESCISSION  
OF CONTRACT.(Cont'd)**

- 84. Option to rescind.
- 85. Agreement to rescind.
- 86. Abandonment of rights.
- 87. Operation and effect.

**(B) RESCISSION BY VENDOR.**

- 88. Right to rescind.
- 89. — In general.
- 90. — Invalidity of contract.
- 91. — Failure of consideration.
- 92. — Breach of covenant or condition in general.
- 93. — Nonpayment of purchase money.
- 94. — Insolvency of purchaser.
- 95. Estoppel or waiver.
  - (1). In general.
  - (2). Waiver of default in payment.
  - (3). Waiver after declaring forfeiture.
- 96. Conditions precedent.
- 97. — In general.
- 98. — Restoration of consideration.
- 99. Defenses or objections.
- 100. Time for rescission, and laches.
- 101. Election to rescind, and notice.
- 102. Acts constituting rescission.
- 103. Partial rescission.
- 104. Actions for rescission.
- 105. Operation and effect.
  - (1). In general.
  - (2). Payment for improvements.
  - (3). Liability for timber cut.
  - (4). Liability for rents and profits.

**(C) RESCISSION BY PURCHASER.**

- 106. Right to rescind.
- 107. — In general.
- 108. — Invalidity of contract.
- 109. — Failure of consideration.
- 110. — Breach of covenant or condition in general.
- 111. — Failure to convey.
- 112. — Defect in title of vendor.
  - (1). In general.
  - (2). Existence of mortgage.
- 113. — Defect in quantity or quality of land.
- 114. Estoppel or waiver.

**III. MODIFICATION OR RESCISSION  
OF CONTRACT.(Cont'd)**

- 115. Conditions precedent.
- 116. — In general.
- 117. — Restoration of possession of land.
- 118. Defenses or objections.
- 119. Time for rescission, and laches.
- 120. Election to rescind, and notice.
- 121. Acts constituting rescission.
- 122. Partial rescission.
- 123. Actions for rescission.
- 124. Operation and effect.
- 125. — In general.
- 126. — Rents and profits.
- 127. — Improvements and expenditures.

**IV. PERFORMANCE OF CONTRACT.****(A) TITLE AND ESTATE OF VENDOR.**

- 128. Estate or title to be conveyed.
- 129. Sufficiency of title in general.
  - (1). In general.
  - (2). Defects in foreclosure proceedings.
  - (4). Title by descent or devise or sale in course of administration.
  - (5). Pendency of action and filing of lis pendens.
  - (6). Defects in prior conveyance.
- 130. Marketable title.
  - (.5). In general.
  - (1). Necessity.
  - (2). Requisites and sufficiency in general.
  - (3). Defects in foreclosure proceedings.
  - (4). Title by descent or devise or sale in course of administration.
  - (5). Pendency of litigation.
  - (6). Defects in prior conveyance.
  - (7). Title by adverse possession.
  - (8). Incumbrances and charges.
  - (9). Easements and encroachments.
- 131. Sufficiency of title by adverse possession.
- 132. Sufficiency of record title.
- 133. Particular requirements as to title.
- 134. Incumbrances, liens or charges.
  - (1). In general.
  - (2). Mortgages.
  - (3). Dower.

**400. VENDOR AND PURCHASER****IV. PERFORMANCE OF CONTRACT.(Cont'd)**

- (4). Building or other restrictions.
- 135. Easements and encroachments.
  - (1). In general.
  - (2). Encroachments on adjoining property or on street.
  - (3). Party wall.
- 136. Satisfaction of purchaser.
- 137. Approval of counsel or other person.
- 138. Knowledge by purchaser of defects.
- 140. Abstract of title.
- 141. Objections to title.
- 142. Effect of insufficiency.
- 143. Waiver of defects and objections.
- 144. Curing defects and perfecting title.
  - (1). In general.
  - (2). Time for curing defects.
  - (3). Security against defects.

**(B) CONVEYANCE.**

- 145. Obligation to convey in general.
- 146. Duty to prepare instrument.
- 147. Demand.
- 148. Tender.
- 149. Sufficiency.
- 149.1. — In general.
- 150. — Nature and form of instrument.
- 151. — Parties.
- 152. — Conformity to provisions of contract in general.
- 153. — Covenants.
- 154. — Conditions and restrictions.
- 155. Approval and acceptance.
- 156. Production and delivery of vendor's title deeds.
- 157. Delivery of possession of property.
- 158. Effect of conveyance on contract.
- 159. Effect of default or delay.

**(C) QUANTITY OF LAND AND APPURTENANCES.**

- 160. Conformity to description in contract in general.
- 161. Specific quantity or measurement.
- 162. Appurtenances.
- 163. Surveys.
- 164. Effect of excess.
- 165. Effect of deficiency.
- 166. Waiver of objections.

**IV. PERFORMANCE OF CONTRACT.(Cont'd)**

- 167. Curing or supplying deficiency or other variance from contract.

**(D) PAYMENT OF PURCHASE MONEY.**

- 168. Obligation to pay in general.
- 169. Demand.
- 170. Tender.
- 172. Interest and expenses.
- 173. Abatement or deductions.
- 174. — In general.
- 175. — Defect in title.
- 176. — Deficiency in quantity of land.
- 177. — Waiver of right.
- 178. Mode and sufficiency of payment.
- 179. — In general.
- 180. — Notes or other obligations, and payment thereof.
- 181. — Assumption and payment of incumbrances or other liabilities.
- 182. Installments and deferred payments.
- 183. Liabilities of joint purchasers, and contribution.
- 184. Effect of payment.
- 185. Effect of default or delay.
- 186. Excuses for default or delay.
- 187. Waiver of default or delay.

**V. RIGHTS AND LIABILITIES OF PARTIES.****(A) AS TO EACH OTHER.**

- 188. Nature of the relation.
- 189. Estoppel of purchaser to deny title of vendor.
- 190. Acquisition or assertion of adverse title or claim.
- 191. Possession or control of property.
- 192. Enjoyment and use of property in general.
- 193. Trees and timber.
- 194. Crops and emblements.
- 196. Rents and profits.
- 197. Incumbrances.
- 198. Taxes and assessments.
- 199. Insurance.
- 200. Repairs.
- 201. Improvements.
- 202. Expenses and losses.
- 203. Injuries to property.



**400. VENDOR AND PURCHASER****V. RIGHTS AND LIABILITIES  
OF PARTIES.(Cont'd)**

- 204. Dealings and transactions between parties.
- 205. Rights and liabilities of joint vendors as to each other.
- 206. Rights and liabilities of joint purchasers as to each other.
- 207. Assignment or other transfer of contract by purchaser.
- 208. Conveyance of property or transfer of interest by vendor.
- 209. Reconveyance by purchaser to vendor.

**(B) AS TO THIRD PERSONS IN GENERAL.**

- 210. Title as against third persons.
- 211. Incumbrances and charges on property before contract.
- 212. Subsequent purchasers from vendor.
- 213. Creditors of vendor.
  - (1). In general.
  - (2). Attachment.
  - (3). Execution.
- 214. Assignees of contract or bond for title.
  - (1). In general.
  - (2). Right to assign contract or bond.
  - (3). Mode and sufficiency of assignment.
  - (4). Assignment for security.
  - (5). Liabilities of vendor or assignor.
  - (6). Liabilities of assignee.
- 215. Purchasers from purchaser.
- 216. Creditors of purchaser.
- 217. Contracts relating to property.
- 218. Trespass or other injuries to property by third persons.
- 219. Actions between vendor or purchaser and third persons.

**(C) BONA FIDE PURCHASERS.**

- 220. Nature and grounds of protection in general.
- 221. Statutory provisions.
- 222. Mode and form of conveyance.
- 223. — In general.
- 224. — Quitclaim.
- 225. Notice.
- 226. — In general.
  - (1). In general.
  - (2). Time of notice.

**V. RIGHTS AND LIABILITIES  
OF PARTIES.(Cont'd)**

- 227. — Actual notice.
- 228. — Effect of notice.
  - (1). In general.
  - (2). Prior contract of sale or conveyance by vendor in general.
  - (3). Unrecorded or defectively recorded instrument in general.
  - (4). Void or defective sale or conveyance.
  - (5). Fraud and mistake.
  - (7). Incumbrance or lien.
- 229. — Constructive notice, and facts putting on inquiry.
  - (1). In general.
  - (2). Unrecorded instrument.
  - (3). Fraud and invalidity of instruments.
  - (4). Existence of will and rights thereunder.
  - (5). Lien or incumbrance and extent thereof.
  - (6). Actions and other proceedings and judgments or decrees.
  - (8). Streets and alleys.
  - (9). Grants to railroads.
  - (10). Knowledge or notice to others.
  - (11). Capacity in which notice is received.
- 230. — Recitals in conveyance.
  - (1). In general.
  - (2). Unrecorded instruments.
  - (3). Lien, charge, or incumbrance.
  - (4). Relation of vendor to former owner.
  - (5). Restrictions and conditions.
- 231. — Records.
  - (1). In general.
  - (2). Necessity and effect of searching records.
  - (3). Facts of which record is notice.
  - (4). Persons affected with notice and notice of instruments not in chain of title.
  - (5). Record as notice of unrecorded instrument.
  - (6). Defective records and requisites of records.
  - (7). Filing as record.

**400. VENDOR AND PURCHASER****V. RIGHTS AND LIABILITIES  
OF PARTIES.(Cont'd)**

- (8). Destruction or withdrawal of records.
- (9). Place of record.
- (10). Time of recording and relation back to delivery.
- (11). Priority between recorded instruments.
- (12). Index to record.
- (13). Instruments not entitled to record or required to be recorded in general.
- (14). Void and defective instruments.
- (14.1). — In general.
- (15). — Absence of or defect in acknowledgment or proof.
- (16). Particular instruments or proceedings.
- (16.1). — In general.
- (17). — Mortgages and other liens or incumbrances.
- 232. — Possession.
  - (1). In general.
  - (2). Requisites and sufficiency of possession.
  - (3). Notice of possession.
  - (4). Extent of possession.
  - (5). Prior vendor.
  - (7). Prior purchasers in general.
  - (8). Possession under unrecorded instrument.
  - (9). By tenant.
  - (10). By tenant in common.
  - (11). Joint possession of vendor and others.
  - (12). By husband and wife.
  - (13). By parent and child.
- 233. Failure to record deed or other instrument.
- 234. Consideration.
- 235. — In general.
- 236. — Payment of value.
- 237. — Pre-existing debt.
- 238. Purchasers from bona fide purchaser.
- 239. Title and rights acquired by bona fide purchasers and equities and defenses against them.
  - (1). In general.

**V. RIGHTS AND LIABILITIES  
OF PARTIES.(Cont'd)**

- (2). Protection against prior contract of sale.
- (3). Effect of sale under execution against vendor.
- (4). Protection from liens and incumbrances.
- (5). Right to timber and fixtures.
- (6). Protection of purchaser of legal title.
- (7). Title as against prior deed of gift.
- (8). Effect of notice to vendor in general.
- (9). Protection against fraud or other invalidity in prior conveyances.
- 240. Pleading purchase in good faith.
- 241. Evidence as to purchase in good faith.
- 241.1. — In general.
- 242. — Presumptions and burden of proof.
- 243. — Admissibility.
- 244. — Weight and sufficiency.
- 245. Questions for jury.

**VI. REMEDIES OF VENDOR.****(A) LIEN AND RECOVERY OF LAND.**

- 246. Nature of lien in general.
- 247. What law governs.
- 248. Statutory provisions.
- 249. Claims which may be secured by lien.
- 250. Property, estate or interest which may be subject to lien.
- 251. Creation of lien in general.
- 252. Title retained by vendor under provisions of contract.
- 253. Lien reserved in contract or conveyance.
- 254. Equitable lien.
  - (1). In general.
  - (2). Conveyance.
  - (3). Contract of sale or bond for deed.
  - (4). Price or consideration and mode or medium of payment.
  - (5). Conveyance to third person at purchaser's request.
- 255. Statutory liens.
- 256. Proceedings to perfect lien.
- 257. Operation and effect of lien in general.
- 258. Amount and extent of lien.
- 259. Property or interest subject to lien.

**400. VENDOR AND PURCHASER****VI. REMEDIES OF VENDOR.(Cont'd)**

- 260. Priority of lien.
  - (1). In general.
  - (2). As to liens acquired by legal proceedings.
  - (3). Amount of lien as against junior lienholder.
- 261. Assignment of lien or claim for purchase money.
  - (1). In general.
  - (2). Assignment of claim or obligation for purchase money as assignment of lien.
  - (3). Rights and liabilities of parties in general.
  - (4). Bona fide purchasers.
  - (5). Priorities.
  - (6). Assignment as transfer or extinguishment of vendor's title.
- 262. Transfer of property by purchaser.
- 263. — In general.
- 264. — Liabilities of purchaser after transfer.
- 265. — Rights and liabilities of subsequent purchasers.
  - (1). In general.
  - (2). Bona fide purchasers.
  - (3). Assumption of lien and personal liability.
  - (4). Rights as against assignee of purchase-money notes.
  - (5). Transfers of separate parcels to different persons.
- 266. Waiver, loss, or discharge of lien.
  - (1). In general.
  - (2). Rescission or repudiation of sale.
  - (3). Conveyance of property by grantor.
  - (4). Death of purchaser.
  - (5). Blending consideration with other demands.
  - (6). Taking note or other obligation from purchaser and renewal thereof.
  - (7). Action on obligation secured.
  - (8). Taking other security and enforcement thereof.
  - (9). As to subsequent purchasers.
  - (10). Transfers of claim or obligation for purchase money.

**VI. REMEDIES OF VENDOR.(Cont'd)**

- 267. Payment, release, or satisfaction of lien.
- 268. Enforcement of lien.
  - 268.1. — In general.
- 269. — Nature and form of remedy.
- 270. — Grounds for enforcement.
- 272. — Restraining enforcement.
- 273. — Conditions precedent.
- 274. — Defenses.
  - (1). In general.
  - (2). Defect in title of vendor.
  - (3). Set-off and counterclaim.
- 275. — Persons entitled to enforce.
- 276. — Persons entitled to contest.
- 277. — Jurisdiction and venue.
- 278. — Time to sue, limitations, and laches.
  - See also LIMITATION OF ACTIONS.*
- 279. — Parties.
- 280. — Pleading.
  - (.5). In general.
  - (1). Bill, petition, or complaint.
  - (2). Plea or answer and subsequent pleadings.
  - (3). Issues, proof, and variance.
- 281. — Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
- 282. — Injunction.
- 283. — Receiver.
- 284. — Trial or hearing.
- 285. — Judgment or decree.
  - (1). In general.
  - (2). Rendition, form, and requisites.
  - (3). Scope and extent of relief in general.
  - (4). Sale of property and disposition of proceeds.
  - (5). Amount of judgment.
- 286. — Execution and enforcement of judgment in general.
- 287. — Sale.
- 288. — Title and rights of purchaser at sale.
- 289. — Redemption from sale.
- 291. — Deficiency and personal liability.

**400. VENDOR AND PURCHASER****VI. REMEDIES OF VENDOR.(Cont'd)**

- 292. — Proceeds and surplus.
- 293. — Review.
- 294. — Fees and costs.
- 295. — Operation and effect.
- 296. Right to recover possession in general.
- 297. Re-entry and possession of vendor.
- 298. Summary remedies for recovery of possession.
- 299. Actions for recovery of possession.
  - (1). In general.
  - (2). Conditions precedent.
  - (3). Pleading and evidence.
  - (4). Trial and judgment and enforcement thereof.
- 300. Operation and effect of recovery of land.

**(B) ACTIONS FOR PURCHASE MONEY.**

- 301. Nature and form.
- 302. Right of action.
- 303. Conditions precedent.
- 304. Defenses.
- 305. — In general.
- 306. — Invalidity of contract.
- 307. — Breach of covenant or condition in general.
- 308. — Defect in title of vendor.
  - (1). In general.
  - (2). Character of defect in general.
  - (3). Incumbrances.
  - (4). Partial failure of title.
  - (5). Conditions precedent to raising defense.
  - (6). Right of purchaser under deed without covenants to raise defense.
  - (7). Right of purchaser under warranty deed to raise defense.
  - (8). Right of purchaser in possession to raise objection.
  - (9). Right to raise defense as dependent on solvency of vendor.
  - (10). Right to defense after selling property.
  - (11). Prior transfer by vendor.
- 309. — Defect in quantity or quality of land.
- 310. — Set-off and counterclaim.
- 312. Time to sue and limitations.  
*See also LIMITATION OF ACTIONS.*

**VI. REMEDIES OF VENDOR.(Cont'd)**

- 313. Parties.
- 314. Pleading.
  - (.5). In general.
  - (1). Petition, complaint, or bill.
  - (2). Plea or answer, affidavit of defense, and subsequent pleadings.
  - (3). Issues, proof, and variance.
- 315. Evidence.
  - (.5). In general.
  - (1). Presumptions and burden of proof.
  - (2). Admissibility.
  - (3). Weight and sufficiency.
- 316. Amount of recovery.
- 317. Trial.
- 318. Judgment and execution.
- 320. Costs.

**(C) ACTIONS FOR DAMAGES.**

- 321. Nature and form.
- 322. Right of action.
- 323. Conditions precedent.
- 324. Defenses.
- 327. Parties.
- 328. Pleading.
- 329. Evidence.
- 330. Damages.
- 331. Trial.

**VII. REMEDIES OF PURCHASER.****(A) RECOVERY OF PURCHASE MONEY PAID.**

- 334. Grounds for recovery of payments.
  - (1). In general.
  - (2). Misrepresentation and fraud of vendor.
  - (3). Rescission by agreement.
  - (4). Rescission by vendor.
  - (5). Defect in title of vendor.
  - (6). Failure or refusal to convey.
  - (7). Overpayment.
- 335. Effect of delay or default in performance by purchaser.
- 336. Waiver of right.
- 337. Lien for purchase money and value of improvements and enforcement thereof.
- 338. Nature and form of action.

**401. VENUE****VII. REMEDIES OF PURCHASER.**(Cont'd)

- 339. Conditions precedent.
- 340. Defenses.
- 341. Proceedings.
  - (.5). In general.
  - (1). Time to sue, limitations, and laches.

*See also LIMITATION OF ACTIONS.*

  - (1.5). Persons liable and parties.
  - (2). Pleading.
  - (3). Evidence.
  - (4). Trial.
  - (5). Amount and items of recovery.
  - (6). Judgment.

**(B) ACTIONS FOR BREACH OF CONTRACT.**

- 342. Nature and form.
- 343. Right of action.
  - (1). In general.
  - (2). Deficiency in quantity of land.
  - (3). Defect in title of vendor.
  - (4). Failure or refusal to convey.
- 344. Conditions precedent.
- 345. Defenses.
- 346. Jurisdiction and venue.
- 347. Time to sue and limitations.
 

*See also LIMITATION OF ACTIONS.*
- 348. Parties.
- 349. Pleading.
- 350. Evidence.
- 351. Damages.
  - (1). In general.
  - (2). Value of land in general.
  - (3). Value of land at time of breach.
  - (4). Value of land at time of breach and interest.
  - (5). Value of land less unpaid purchase money.
  - (6). Damages for deficiency or partial failure of title.
  - (7). Improvements.
  - (8). Damages for loss of bargain.
  - (9). Nominal damages.
  - (10). Interest on damages.
- 352. Trial.
- 353. Judgment and execution.

**401. VENUE****SUBJECTS INCLUDED**

Place in which actions should be brought and tried in general

Distinctions in respect thereof between local and transitory actions

Grounds for change of venue or place of trial, proceedings therefor, and effect of such change

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Corporations, venue of actions by or against, see CORPORATIONS AND BUSINESS ORGANIZATIONS and specific topics relating to particular classes of corporations

Criminal prosecutions, venue of, see CRIMINAL LAW

Federal courts, district in which action should be brought or tried, see FEDERAL COURTS and specific topics

Particular forms or classes of actions, venue of, see QUIETING TITLE and other specific topics

Plea of privilege, or plea in abatement raising objections to venue, and proceedings thereon, see PLEADING

Proceedings other than actions, place of bringing, see HABEAS CORPUS and specific topics relating to other special proceedings

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- I. NATURE OR SUBJECT OF ACTION, ¶1.5–17.
  - II. DOMICILE OR RESIDENCE OF PARTIES, ¶18–32.
  - III. CHANGE OF VENUE OR PLACE OF TRIAL, ¶33–84.

**I. NATURE OR SUBJECT OF ACTION.**

- 1.5. Nature and necessity of venue in action.
- 2. Place in which action may be brought or tried in general.
- 3. Constitutional and statutory provisions.
- 4. Local or transitory nature of action in general.
- 5. Actions relating to real property.
  - 5.1. — In general.
  - 5.2. — Actions for sale or enforcement of liens and of debts which may become charges on land.

**401. VENUE****I. NATURE OR SUBJECT OF ACTION.(Cont'd)**

- 5.3. — Recovery of real estate or determination of interest therein.
  - (1). In general.
  - (2). Particular actions.
    - (2.1). — In general.
  - (3). — Ejectment.
  - (4). — Partition.
  - (5). — Quieting title; removal of cloud on title.
  - (6). — Specific performance.
  - (7). — Trespass to try title.
  - (8). — Leases and mineral interests, actions involving.
- 5.4. — Setting aside conveyances, assignments, incumbrances, judgment, liens, etc.
- 5.5. — Injuries to real property.
- 6. Actions relating to personal property.
- 7. Actions on contracts.
  - (.5). In general.
    - (1). Transitory character in general.
    - (2). Particular contracts or actions.
    - (3). Place of making.
    - (4). Place of performance or payment.
      - (4.1). — In general.
    - (5). — Particular contracts or actions.
    - (6). — Bills, notes, or bonds.
    - (7). — Sales.
    - (8). — Services.
- 7.5. — Contracts in writing.
  - (1). In general.
  - (2). Designation of place of performance.
  - (3). Particular contracts or actions.
    - (3.1). — In general.
  - (4). — Bills, notes, and mortgages.
  - (5). — Land contracts.
  - (6). — Leases and rental contracts.
  - (7). — Sales.
  - (8). — Services.
- 8. Actions for torts.
  - 8.1. — In general.
  - 8.2. — Particular torts.
  - 8.5. — Exceptions in Texas venue statute.
    - (1). In general.
    - (2). Fraud.
    - (3). Crime or offense in general.

**I. NATURE OR SUBJECT OF ACTION.(Cont'd)**

- (5). Trespass in general.
- (6). Negligence as trespass.
- (7). Conversion.
- (8). Negligence.
- 9. Actions for penalties or forfeitures.
- 10. Actions by or against parties in representative capacity.
- 11. Actions against public officers and others for official acts.
- 12. Actions arising out of the jurisdiction.
- 13. Situation of subject of action.
- 14. Place of accrual of cause of action.
- 15. Ancillary and incidental actions and proceedings.
- 16. Right to sue in more than one county or district, and election.
- 16.5. Joinder of causes of action suable in different counties.
- 17. Objections and exceptions, estoppel, and waiver.

**II. DOMICILE OR RESIDENCE OF PARTIES.**

- 18. Place in which party may sue or be sued in general.
- 19. Constitutional and statutory provisions.
- 20. Privileges of defendants.
- 21. — In general.
- 22. — Codefendants.
  - (1). In general; joint or related causes of action.
  - (2). Makers or principals and indorsers or sureties.
  - (3). Materiality of resident defendant in general.
  - (4). Necessary or proper parties.
  - (5). Dismissal of, or failure to recover against, resident defendant.
  - (6). Particular actions, application to.
  - (7). Particular classes of parties, application to.
  - (7.1). — In general.
  - (8). — Corporations, stockholders, and officers.
  - (9). — Public officers or entities.
  - (10). Cross defendants or new parties.
- 23. Rights of plaintiffs.
- 24. — In general.
- 25. — Coplaintiffs.
- 26. Actions by or against nonresidents.
- 27. Effect of assignment of cause of action.

**402. WAR AND NATIONAL EMERGENCY****II. DOMICILE OR RESIDENCE  
OF PARTIES.(Cont'd)**

- 28. Domicile or residence for purpose of action.
- 29. Place of business, office, or agency.
- 30. Place where party is found or process served.
- 31. Right to sue in more than one county or district, and election.
- 32. Objections and exceptions, estoppel, and waiver.
  - (1). In general.
  - (2). Estoppel and waiver.

**III. CHANGE OF VENUE OR  
PLACE OF TRIAL.**

- 33. Power and duty of court in general.
- 34. Constitutional and statutory provisions.
- 36. Causes in which change may be granted.
- 37. Condition of cause.
- 38. Right of plaintiff to change.
- 39. Right of defendant to change.
- 40. — In general.
- 41. — Codefendants.
- 42. Discretion of court.
- 43. Successive applications.
- 44. Stipulations and agreements.
- 45. Grounds for change in general.
- 46. Action not brought in proper county or district.
- 47. Alteration of county or district pending action.
- 48. Change of domicile or residence of party pending action.
- 49. Disqualification or prejudice of judge.
  - (1). In general.
  - (2). Former employment or consultation as attorney or counsel.
- 50. Local prejudice.
- 51. Promotion of justice.
- 52. Convenience.
  - (1). In general.
  - (2). Officers and employees of party.
  - (3). Expert witnesses.
  - (4). Competency and materiality of testimony.
  - (5). Condition of calendar in county to which removal is sought.
- 52.5. Grounds for objection to change.
- 53. Admissions to prevent change.
- 54. Mode of effecting change in general.

**III. CHANGE OF VENUE OR PLACE  
OF TRIAL.(Cont'd)**

- 55. Change by amendment of pleadings and effect of amendment.
- 56. Demand for change, and consent or refusal.
- 57. Change on court's own motion.
- 58. Form and requisites of application in general.
- 59. Persons entitled to apply.
- 60. Jurisdiction of application.
- 61. Time for application.
- 62. Parties on application.
- 63. Notice of application.
- 64. Affidavits for change.
  - 64.1. — In general.
- 65. — Necessity.
- 66.5. — Requisites and grounds.
- 68. Counter affidavits and other evidence.
- 69. Counter application for retention of cause.
- 70. Conclusiveness and effect of affidavits and other proofs.
- 71. Effect of pending application.
- 72. Hearing and determination.
- 73. Conditions on granting or refusing change.
- 74. County or district to which change may be made.
- 75. Order granting or refusing change.
- 76. Vacating or setting aside order.
- 77. Waiver of change.
- 78. Operation and effect of order.
- 79. Transmission of record or transcript.
- 80. Jurisdiction and proceedings after change.
- 81. Remand.
- 82. Second or subsequent change.
- 83. Jurisdiction and proceedings after refusal.
- 84. Objections and exceptions, estoppel, and waiver.

**402. WAR AND NATIONAL  
EMERGENCY****SUBJECTS INCLUDED**


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Armed contests between nations or states

**402. WAR AND NATIONAL EMERGENCY**

Such contests within a nation or state which prevent the regular administration of the laws by the civil authorities

Power to make war and peace, and commencement and termination of hostilities

Effect of existence of war and of martial law on civil rights, liabilities, and remedies

Rights of belligerents and of neutrals in general

Prosecution of war and exercise of war powers in general

Embargo and nonintercourse acts, blockades, contraband goods, illegal trading, captures and prizes, confiscation and sequestration of enemies' property

Military occupation and conquest of enemies' territory

Martial law and administration thereof by courts-martial, military commissions, and other tribunals

Peacetime national emergency and exercise of powers therein

Particular measures and acts in exercise of war and emergency powers, such as mobilization for war, protection against subversive activities, detention of enemy combatants, price control, rent and housing regulation, rationing, control of petroleum products, labor and wage control, and foreign trade restrictions

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Insurrection, rebellion, etc., as offenses, and suppression thereof by civil authority, see **INSURRECTION AND SEDITION**

Statutes of limitations, suspension of running of, see **LIMITATION OF ACTIONS**

Courts martial for members of armed forces, see **MILITARY JUSTICE**

Neutrality laws, violations of, see **INTERNATIONAL LAW III(D)**

Treason by levying war, etc., see **TREASON**

Claims against United States for losses in war, see **UNITED STATES**

Disaster aid, see **UNITED STATES**

- I. IN GENERAL, [§1000–1099](#).  
 (A) WAR IN GENERAL, [§1000–1010](#).  
 (B) STATUS AND RIGHTS OF PERSONS DURING WAR, [§1011–1018](#).

I. IN GENERAL—Cont'd

- (C) EFFECT OF WAR ON PREEXISTING CONTRACTS AND TRADE, [§1019–1023](#).

- (D) EFFECT OF WAR ON ACTIONS AND REMEDIES, [§1024–1025](#).

- (E) COMMERCIAL INTERCOURSE WITH ENEMY, [§1026–1030](#).

- (F) REQUISITION OR SEIZURE OF PROPERTY, [§1031–1054](#).

1. REQUISITION OF PROPERTY, [§1031–1037](#).

2. PROPERTY OF ENEMIES, [§1038–1044](#).

3. TRADING WITH THE ENEMY RESTRICTIONS, [§1045–1054](#).

- (G) WAR AT SEA, [§1055–1081](#).

1. BLOCKADE, [§1055–1058](#).

2. CAPTURE AT SEA, [§1059–1071](#).

3. PRIZE PROCEEDINGS, [§1072–1081](#).

- (H) MILITARY CONTROL OF ENEMY TERRITORY, [§1082–1096](#).

1. MILITARY OCCUPATION AND CONQUEST OF TERRITORY, [§1082–1087](#).

2. MARTIAL LAW, [§1088–1094](#).

3. COURTS-MARTIAL AND MILITARY TRIBUNALS, [§1095–1096](#).

- (I) PEACE, [§1097–1099](#).

II. MEASURES AND ACTS IN EXERCISE OF FEDERAL POWER, [§1100–1338](#).

- (A) IN GENERAL, [§1100–1109](#).

- (B) PARTICULAR MEASURES, ORDERS, AND REGULATIONS, [§1110–1338](#).

1. MOBILIZATION FOR WAR, [§1110–1121](#).

2. PROTECTION AGAINST SUBVERSIVE ACTIVITIES, [§1122–1136](#).

3. ALIENS AND ENEMY COMBATANTS, [§1137–1144](#).

4. PRICE CONTROL, [§1145–1223](#).

5. RENTS AND HOUSING, [§1224–1268](#).

6. ALLOCATION AND RATIONING OF COMMODITIES AND SERVICES, [§1269–1285](#).

7. CONTROL AND RATIONING OF PETROLEUM PRODUCTS, [§1286–1316](#).

8. LABOR AND WAGE CONTROL, [§1317–1322](#).



**402. WAR AND NATIONAL EMERGENCY**

**II. MEASURES AND ACTS IN EXERCISE  
OF FEDERAL POWER—Cont'd**  
**(B) PARTICULAR MEASURES, OR-  
DERS, AND REGULATIONS**  
 —Cont'd  
 9. FOREIGN TRADE RESTRIC-  
TIONS,  $\S$ 1323–1338.  
**III. STATE SUPPLEMENTARY MEAS-  
URES,  $\S$ 1339–1351.**

**I. IN GENERAL.****(A) WAR IN GENERAL.**

- 1000. Nature and incidents in general.
- 1001. Power to make war.
- 1002. Commencement.
- 1003. Recognition of existence of state of war.
- 1004. Civil war.
- 1005. Prosecution of war.
- 1006. Neutrality of nations in general.
- 1007. Liabilities for exercise of war powers.
- 1008. — In general.
- 1009. — Immunity.
- 1010. — War crimes in general.

**(B) STATUS AND RIGHTS OF  
PERSONS DURING WAR.**

- 1011. In general.
- 1012. Effect of war on civil rights in general.
- 1013. United States citizens.
- 1014. Neutrals and neutrality in general.
- 1015. Subjects of enemy nations in general.
- 1016. War crimes against civilian noncombatants.
- 1017. Prisoners of war.
- 1018. Enemy combatants.

**(C) EFFECT OF WAR ON PREEXISTING  
CONTRACTS AND TRADE.**

- 1019. In general.
- 1020. Contracts of agency and partnership.
- 1021. Insurance contracts.
- 1022. Contracts of sale.
- 1023. Bills and notes.

**(D) EFFECT OF WAR ON ACTIONS AND REMEDIES.**

- 1024. Rights of action.
- 1025. Capacity to sue or be sued.

**(E) COMMERCIAL INTERCOURSE WITH ENEMY.**

- 1026. In general.

**I. IN GENERAL.(Cont'd)**

- 1027. Constitutional and statutory provisions.
- 1028. Contracting with enemy subjects.
- 1029. Seizure and forfeiture of citizen's property.
- 1030. Commerce with neutrals.

**(F) REQUISITION OR SEIZURE OF PROPERTY.****1. REQUISITION OF PROPERTY.**

- 1031. Contributions and requisitions in general.
- 1032. Property of neutrals.
- 1033. Seizure of contraband.
- 1034. Compensation for property taken.
- 1035. — In general.
- 1036. — Amount and sufficiency.
- 1037. — Proceedings.

**2. PROPERTY OF ENEMIES.**

- 1038. Rights of war as to enemy's property in general.
- 1039. Constitutional and statutory provisions.
- 1040. Capture of property on land.
- 1041. Statutory confiscation proceedings.
- 1042. Disposition of captured or abandoned property.
- 1043. Recapture and restoration to owner of property.
- 1044. War crimes against property.

**3. TRADING WITH THE ENEMY RESTRICTIONS.**

- 1045. In general.
- 1046. Constitutional and statutory provisions.
- 1047. Designation of enemies.
- 1048. Vesting order; determination of enemy character of property.
- 1049. Freezing and blocking orders.
- 1050. Proceedings of Alien Property Custodian.
- 1051. Claims against property in hands of Alien Property Custodian.
- 1052. Unblocking license.
- 1053. Return of property.
- 1054. Criminal responsibility.

**(G) WAR AT SEA.****1. BLOCKADE.**

- 1055. Establishment and duration.

**402. WAR AND NATIONAL EMERGENCY****I. IN GENERAL.**(Cont'd)

- 1056. Notice.
- 1057. Violation; penalty.

**2. CAPTURE AT SEA.**

- 1059. In general.
- 1060. Visit and search of neutral vessels.
- 1061. Property subject to capture.
- 1062. — In general.
- 1063. — Vessels of United States and goods.
- 1064. — Enemy vessels and goods.
- 1065. — Neutral vessels and goods.
- 1066. — Contraband.
- 1067. — Exemptions.
- 1068. Duties and liabilities of captors.
- 1069. Duties and liabilities of neutrals.
- 1070. Effect of capture on title, lien, or other claim.
- 1071. Recapture and restoration to owner of vessel.

**3. PRIZE PROCEEDINGS.**

- 1072. In general.
- 1073. Jurisdiction and venue.
- 1074. Parties, process, and pleadings.
- 1075. Evidence and hearing.
- 1076. Adjudication or decree.
- 1077. Appropriation or sale of property.
- 1078. Restitution or compensation to owners.
- 1079. Costs and fees.
- 1080. Prize money.
- 1081. Review.

**(H) MILITARY CONTROL OF ENEMY TERRITORY.****1. MILITARY OCCUPATION AND CONQUEST OF TERRITORY.**

- 1082. In general.
- 1083. Effect of occupation.
- 1084. Military government.
- 1085. Collection of taxes and duties.
- 1086. Establishment of courts of justice.
- 1087. Liabilities of members of occupying forces.

**2. MARTIAL LAW.**

- 1088. In general.
- 1089. Preconditions for martial law.

**I. IN GENERAL.**(Cont'd)

- 1090. Declaration or institution of martial law.
- 1091. Qualified or modified martial law.
- 1092. Scope and extent of powers.
- 1093. Authority of the military over civilians.
- 1094. Enforcement.

**3. COURTS-MARTIAL AND MILITARY TRIBUNALS.**

- 1095. In general.
- 1096. Court of Military Commission Review proceedings.

**(I) PEACE.**

- 1097. In general.
- 1098. Termination of war.
- 1099. Operation and effect of treaties of peace.

**II. MEASURES AND ACTS IN EXERCISE OF FEDERAL POWER.****(A) IN GENERAL.**

- 1100. In general.
- 1101. Constitutional and statutory provisions.
- 1102. Executive powers in general.
- 1103. Administrative agencies and proceedings.
- 1104. Orders and regulations in general.
- 1105. Judicial supervision in general.
- 1106. Effect of precautionary acts on rights and liabilities.
- 1107. — In general.
- 1108. — Contracts.
- 1109. — Leases.

**(B) PARTICULAR MEASURES, ORDERS, AND REGULATIONS.****1. MOBILIZATION FOR WAR.**

- 1110. In general.
- 1111. Manufacture and procurement of war materials.
- 1112. — In general.
- 1113. — Conversion to war production.
- 1114. — Seizure or control of private business.
- 1115. — Excess profits on government contracts.
- 1116. Restrictions on aid to other nations.
- 1117. Control of communications.

**402. WAR AND NATIONAL EMERGENCY****II. MEASURES AND ACTS IN EXERCISE  
OF FEDERAL POWER.(Cont'd)**

- 1118. Protections of property and welfare of citizens.
- 1119. Welfare of armed forces.
- 1120. Food administration.
- 1121. Sale or disposition of government property.

**2. PROTECTION AGAINST SUBVERSIVE ACTIVITIES.**

- 1122. In general.
- 1123. Constitutional and statutory provisions.
- 1124. Regulation of military areas.
- 1125. Espionage.
- 1126. Sabotage.
- 1127. Regulation of subversive organizations.
- 1128. Anti-terrorism measures.
- 1129. — In general.
- 1130. — Designation of foreign terrorist organization.
- 1131. — Crimes and criminal prosecutions.
- 1132. — Private remedies.
  - (1). In general.
  - (2). What law governs.
- 1133. Foreign intelligence surveillance.  
*Establishment and organization of Foreign Intelligence Surveillance Court, see FEDERAL COURTS ¶2005.*
- 1134. Access to secrets or classified information; security clearances.
- 1134.5. — In general.
- 1135. — Power to restrict access.
- 1136. — Security clearance proceedings.

**3. ALIENS AND ENEMY COMBATANTS.**

- 1137. Restrictive measures in general.
- 1139. Exclusion and internment of nationals of enemy ancestry.
- 1140. Detention of enemy combatants; military commissions.
- 1141. — In general.
- 1142. — Validity of continued detention.
- 1143. — Proceedings.
- 1144. — Review.

**4. PRICE CONTROL.**

- 1145. In general.
- 1146. Constitutional and statutory provisions.
- 1147. — In general.
- 1148. — Validity.
- 1149. Power to regulate prices.

**II. MEASURES AND ACTS IN EXERCISE  
OF FEDERAL POWER.(Cont'd)**

- 1150. Commodities or service subject to regulation.
- 1151. Persons or agencies subject to regulation.
- 1152. Administration of price control.
- 1153. Orders and regulations in general.
- 1154. Validity of orders and regulations.
- 1155. — In general.
- 1156. — Arbitrary or unreasonable regulations.
- 1157. — Discrimination.
- 1158. — Individual hardship.
- 1159. — Regulations beyond scope of price control.
- 1160. — Insufficient standards.
- 1161. — Presumptions and burden of proof.
- 1162. Change in regulation, order, or interpretation.
- 1163. Construction and operation of regulations.
- 1164. Violation of regulations.
- 1165. Responsibility of dealer for acts of agents and employees.
- 1166. Defenses.
- 1167. Establishment of prices.
- 1168. — In general.
- 1169. — Factors governing determination.
- 1170. — Adjustment.
- 1171. Regulations supplementary to price ceilings.
- 1172. Common carrier rates.
- 1173. Public utility rates.
- 1174. Subsidies.
- 1175. Restrictions of margins and profits.
- 1176. Licenses and permits.
- 1177. Objections to orders, regulations, and prices.
- 1178. Review of orders and regulations.
- 1179. — In general.
- 1180. — Matters reviewable.
- 1181. — Presentation of grounds in prior proceeding.
- 1182. — Scope of review.
- 1183. — Proceedings on review.
- 1184. Enforcement of price controls in general.
- 1185. Suspension of right to operate.

**402. WAR AND NATIONAL EMERGENCY****II. MEASURES AND ACTS IN EXERCISE  
OF FEDERAL POWER.(Cont'd)**

- 1186. Investigation, inspection, and discovery.
- 1187. Injunction against violation of price controls.
- 1188. — In general.
- 1189. — Grounds.
- 1190. — Violations that may be enjoined.
- 1191. — Discretion in issuing injunction.
- 1192. — Effect of discontinuance of violation.
- 1193. — Proceedings for injunction in general.
- 1194. — Preliminary injunction.
- 1195. — Evidence.
- 1196. — Order or decree.
- 1197. — Review.
- 1198. — Violation of injunction.
- 1199. Actions to recover overcharges and penalties.
- 1200. — In general.
- 1201. — Persons entitled to sue.
- 1202. — Pleading.
- 1203. — Evidence.
- 1204. — Questions of fact.
- 1205. — Trial.
- 1206. — Damages in general.
- 1207. — Effect of willfulness and precautions taken.
- 1208. — Extent of recovery.
- 1209. — Costs and fees.
- 1210. — Review.
- 1211. Injunction against enforcement of price controls.
- 1212. Effect of established price on rights and liabilities.
- 1213. — In general.
- 1214. — Damages.
- 1215. — Contracts.
- 1216. Offenses against price controls.
- 1217. — In general.
- 1218. — Defenses.
- 1219. — Indictment, information, or complaint.
- 1220. — Evidence.
- 1221. — Questions of fact.
- 1222. — Trial.
- 1223. — Review.

**5. RENTS AND HOUSING.**

- 1224. In general.
- 1225. Constitutional and statutory provisions.
- 1226. Power to regulate.
- 1227. Property subject to regulation.
- 1228. Persons and agencies subject to regulation.
- 1229. Administration of rent and housing controls.
- 1230. Orders and regulations in general.
- 1231. Establishment of authorized rents.
- 1232. Amount of rent in general.
- 1233. Maintenance of services by landlord.
- 1234. Adjustment of rents.
- 1235. Review of orders and regulations.
- 1236. Enforcement of rent orders and regulations.
- 1237. Investigation and inspection.
- 1238. Actions to recover overcharges and penalties.
- 1239. — In general.
- 1240. — Defenses.
- 1241. — Time to sue and limitations.
- 1242. — Pleading.
- 1243. — Evidence.
- 1244. — Questions of fact.
- 1245. — Relief.
- 1246. — Costs and fees.
- 1247. Injunction against violation of regulations.
- 1248. — In general.
- 1249. — Proceedings.
- 1250. — Violation of injunction.
- 1251. Protection for possession of tenant.
- 1252. Grounds for eviction in general.
- 1253. Landlord's right to occupy premises.
- 1254. Purchaser's right to possession.
- 1255. Administrative authorization of eviction suit.
- 1256. Notice of eviction.
- 1257. — In general; notice to tenant.
- 1258. — Notice to administrative agency.
- 1259. Proceedings to recover possession.
- 1260. — In general.
- 1261. — Pleading.
- 1262. — Evidence.
- 1263. — Questions of fact.
- 1264. — Order or judgment.
- 1265. Damages for wrongful eviction.

**402. WAR AND NATIONAL EMERGENCY****II. MEASURES AND ACTS IN EXERCISE  
OF FEDERAL POWER.(Cont'd)**

- 1266. Offenses and prosecutions.
- 1267. Housing regulations in general.
- 1268. Emergency housing construction.

**6. ALLOCATION AND RATIONING OF  
COMMODITIES AND SERVICES.**

- 1269. In general.
- 1270. Constitutional and statutory provisions.
- 1271. Commodities and services subject to regulation.
- 1272. Administration of rationing program.
- 1273. Orders and regulations in general.
- 1274. Allocation of commodities and services.
- 1275. Responsibility of dealer for acts of agents and employees.
- 1276. Suspension of right to operate.
- 1277. — In general.
- 1278. — Proceedings.
- 1279. — Order of suspension.
- 1280. — Review.
- 1281. Injunction against enforcement.
- 1282. Injunction against violation of regulations.
- 1283. — In general.
- 1284. — Proceedings.
- 1285. Offenses and prosecutions.

**7. CONTROL AND RATIONING OF  
PETROLEUM PRODUCTS.**

- 1286. In general.
- 1287. Constitutional and statutory provisions.
- 1288. Commodities subject to regulation.
- 1289. Administration of price control.
- 1290. Orders and regulations in general.
- 1291. Validity of orders and regulations.
- 1292. — In general.
- 1293. — Arbitrary or unreasonable regulation.
- 1294. Allocations of commodities.
- 1295. Construction and operation of regulations.
- 1295.5. Violation of regulations.
- 1296. Export or import licenses.
- 1297. Establishment of prices.
- 1298. — In general.
- 1299. — Adjustment.
- 1300. Review of orders and regulations.
- 1301. — In general.

**II. MEASURES AND ACTS IN EXERCISE  
OF FEDERAL POWER.(Cont'd)**

- 1302. — Matters reviewable.
- 1303. — Presentation of grounds in prior proceeding.
- 1304. — Scope of review.
- 1305. — Proceedings on review.
- 1306. Enforcement of price controls.
- 1307. Suspension of right to operate.
- 1308. Investigation, inspection, and discovery.
- 1309. Actions and proceedings to recover overcharges and penalties.
- 1310. — In general.
- 1311. — Time to sue and limitations.
- 1312. — Refund distribution proceedings.
- 1313. — Exhaustion of administrative remedies.
- 1314. Injunction against enforcement.
- 1315. Injunction against violation of regulations.
- 1315.5. Effect of established price on contractual rights and liabilities.
- 1316. Offenses and prosecutions.

**8. LABOR AND WAGE CONTROL.**

- 1317. In general.
- 1318. Constitutional and statutory provisions.
- 1319. Labor disputes.
- 1320. Wage control.
- 1321. Review and enforcement of orders and regulations.
- 1322. Penalties and prosecutions.

**9. FOREIGN TRADE RESTRICTIONS.**

- 1323. In general.
- 1324. Constitutional and statutory provisions.
- 1325. Executive proclamations and orders.
- 1326. Export restrictions.
- 1327. Import restrictions.
- 1328. Ban on travel.
- 1329. Bonds.
- 1330. Permits and licenses.
- 1331. Defenses.
- 1332. Searches and seizures.
- 1333. Forfeitures.
- 1334. — In general.
- 1335. — Proceedings.
- 1336. Claims to property blocked or forfeited.

**402. WAR AND NATIONAL EMERGENCY****II. MEASURES AND ACTS IN EXERCISE  
OF FEDERAL POWER.**(Cont'd)

1337. Fines and penalties.  
1338. Offenses and prosecutions.

**III. STATE SUPPLEMENTARY MEASURES.**

1339. Civil defense in general.  
1340. Constitutional and statutory provisions.  
1341. Measures and acts in exercise of state power in general.  
1342. Preemption by federal power.  
1343. — In general.  
1344. — Price control.  
1345. — Rent regulation.  
1346. Particular measures, orders, and regulations.  
1347. — In general.  
1348. — Air raids and blackouts.  
1349. — Price and business controls.  
1350. — Sedition and obstruction of war effort.  
1351. Exemptions from liability while complying with regulations.

**403. WAREHOUSEMEN****SUBJECTS INCLUDED**

Regulation and conduct of the business of storage and safe-keeping, for compensation, of goods of any kind, whether ordinary goods in storehouses or at wharves, etc., or valuables in safes or vaults of safe-deposit companies, grain in elevators, cattle in stock yards, etc.

The mutual rights, duties, and liabilities of persons engaged in such business and those dealing with them

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Automobiles, garages and liverymen, see AUTOMOBILES

Bailment in general, see BAILMENT

Carriers as warehousemen, liabilities of, see CARRIERS

Money, special deposits in banks or trust companies, see FINANCE, BANKING, AND CREDIT IV, XI

United States bonded warehouses, see CUSTOMS DUTIES, INTERNAL REVENUE

1. Power to regulate.
2. Statutory and municipal regulations.
3. Who are warehousemen.
4. Incorporation and organization of companies.
5. Franchises and powers.
6. Licenses and taxes.
7. Supervision by public officers in general.
8. Conduct of business in general.
9. Duty to receive goods.
10. Contracts for storage in general.
11. Warehouse receipts.
  - 11.1. — In general.
12. — Nature and requisites in general.
13. — Making, issuance, and delivery.
14. — Construction and operation.
15. — Negotiability and transfer.
  - (.5). In general.
    - (1). Instruments negotiable or assignable.
    - (2). Operation and effect of indorsement or assignment.
    - (3). Pledges.
16. — Rights and remedies of holders in general.
17. — Bona fide purchasers.
18. Bonds for delivery.
19. Manner and place of storage.
20. Storing in bulk or mixing grain or other produce.
22. Insurance.
24. Loss of or injury to goods.
  - (.5). In general.
    - (1). Care required of warehousemen in general.
    - (2). Acts or omissions for which warehouseman is liable in general.
    - (3). Loss by fire.
    - (4). Loss by theft.
    - (5). Proximate cause of loss or injury.
    - (6). Contributory negligence of owner.
    - (7). Limitation of liability.
25. Delivery by warehouseman.
  - (.5). In general.

**404. WASTE**

- (1). Duty to deliver in general.
- (2). Statutory provisions.
- (3). Demand for delivery.
- (4). Production of warehouse receipt or written order.
- (5). Liability for misdelivery or nondelivery in general.
- (6). Place of delivery.
- (7). Wrongful sale or other disposition of property by warehouseman.
- (8). Excuses for nondelivery or misdelivery.
27. Charges and expenses.
28. Advances.
29. Lien.
- 29.1. — In general.
30. — Nature and grounds in general.
31. — Creation and existence.
32. — Amount and extent.
- 32.5. — Waiver.
33. — Enforcement.
34. Actions by or against warehousemen.
  - (.5). In general.
    - (1). Nature and form of remedy.
    - (2). Right of action and defenses.
    - (3). Parties.
    - (4). Pleading.
    - (5). Presumptions and burden of proof.
    - (6). Admissibility of evidence.
    - (7). Weight and sufficiency of evidence.
    - (8). Damages.
    - (9). Questions for jury.
    - (10). Instructions.
    - (10.5). Verdict and findings.
    - (11). Judgment.
35. Penalties for violations of regulations.
36. Offenses by warehousemen.
37. Offenses by persons dealing with warehousemen.
38. Safe depositaries.
39. — In general.
40. — Statutory provisions.
41. — Corporations in general.
42. — Powers and functions of depositaries in general.
43. — Leases of safe deposit boxes and deposits therein.

44. — Compensation or expenses and lien therefor.
45. — Loss of or injury to deposit.
46. — Redelivering of deposit.
47. — Actions.

**404. WASTE****SUBJECTS INCLUDED**

Acts done or permitted by tenants holding particular estates in real property, causing permanent or lasting injury to the inheritance or to rights of those entitled in reversion or remainder

Nature and extent of liability for such injuries in general

Remedies therefor

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Executors and other fiduciaries, waste by, see EXECUTORS AND ADMINISTRATORS, GUARDIAN AND WARD, TRUSTS

Rights, powers, and liabilities of—

Life tenants, see LIFE ESTATES

Tenants for years or at will, see LANDLORD AND TENANT

Tenants in common, see TENANCY IN COMMON

1. Nature and elements in general.
2. Statutory provisions.
3. Permissive waste.
4. Equitable waste.
5. Persons who may commit waste.
6. Particular acts or omissions constituting waste.
7. — In general.
8. — Minerals, mines, and quarries.
9. — Trees and timber.
10. — Buildings and fixtures.
11. Defenses.
12. Persons entitled to sue.
13. Persons liable.
14. Actions for waste.

**404. WASTE**

- 14.1. — In general.
- 15. — Nature and form of remedy.
- 16. — Estreperment.
- 17. — Injunction.
- 18. — Damages.
- 19. — Accounting.
- 20. — Proceedings.
- 21. Penalties, and actions therefor.
- 22. Forfeitures, and enforcement thereof.

**405. WATER LAW****SUBJECTS INCLUDED**

Bodies and streams of water, whether or not capable of ordinary navigation in their natural condition or as improved

Diffuse surface waters

Groundwater, percolating and subterranean waters

Riparian and littoral rights and liabilities in respect of waters, beds, and banks, and obstruction, diversion, and pollution of waters, flowage of uplands thereby, and ice formed on waters

Accretion, reliction, and avulsion and rights incident thereto

Appropriation of waters and priorities, permits, and other rights with respect thereto

General adjudication of all rights in a water-course, body, or basin

Public access to and use of waters and their shores, beds, and banks

Artificially created water bodies and water-courses

Conveyances and contracts regarding waters and rights therein or appurtenant thereto

Prescriptive rights in or relating to waters

Provision for and regulation of the public water supply

Construction and operation of works for supply, control, and use of water as a motive power

Reclamation of arid lands and irrigation

Comprehensive, dedicated, and local water planning and management agencies, boards, districts, and regimes

International and interstate water resources management

Reserved waters, incident to setting aside or withdrawal of lands from public domain

Navigable waters, navigation and obstruction thereof, navigation improvements, ports and harbors, and rights in lands under such waters

Canals for purposes of navigation, and construction, maintenance, regulation, and use thereof

Drainage of swamp or lowlands by means of channels and other works constructed by public authority

Levees, embankments, and other works constructed by public authority to protect lands from flooding

Taxes and assessments incident to establishment and construction of such works

Water rights incident to weather modification and precipitation enhancement

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Boundaries, bodies and streams of water as, see BOUNDARIES, STATES

Bridges, see BRIDGES, RAILROADS

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Indian water rights and management, see INDIANS

Logs, floatage of, see LOGS AND LOGGING

Water pollution statutes and regulations, see ENVIRONMENTAL LAW

Wetlands and coastal areas, protection of, see ENVIRONMENTAL LAW

Ferries, see FERRIES

Fishing in public waters, see FISH

Regulation of—

- Commerce, see COMMERCE
- Shipping in general, see SHIPPING

Rules of navigation for preventing collision, see COLLISION

Wharves, see WHARVES

Admiralty jurisdiction, see ADMIRALTY

Eminent domain and condemnation, exercise of power of, see EMINENT DOMAIN

Transportation of passengers and goods, see CARRIERS, SHIPPING



## 405. WATER LAW

Sewers and sanitary drains generally, see ENVIRONMENTAL LAW, MUNICIPAL CORPORATIONS

Taxation of canals established for purposes of navigation, see TAXATION

- I. IN GENERAL, ¶1000–1024.
- II. COMPREHENSIVE WATER RESOURCE PLANNING AND MANAGEMENT IN GENERAL, ¶1025–1059.
  - (A) IN GENERAL, ¶1025–1029.
  - (B) DISTRICTS, AGENCIES, AND OTHER ADMINISTRATIVE AUTHORITIES, ¶1030–1039.
  - (C) INTERSTATE WATER RESOURCES MANAGEMENT IN GENERAL, ¶1040–1049.
  - (D) INTERNATIONAL WATER RESOURCES MANAGEMENT IN GENERAL, ¶1050–1054.
  - (E) WATER BANKING, TRUSTS, TRANSFER AGREEMENTS, AND WHEELING, ¶1055–1059.
- III. NATURAL WATERCOURSES, LAKES, AND PONDS IN GENERAL, ¶1060–1082.
- IV. GROUNDWATER: SUBTERRANEAN AND PERCOLATING WATERS, ¶1083–1159.
- V. DIFFUSE SURFACE WATERS, ¶1160–1219.
  - (A) IN GENERAL, ¶1160–1194.
  - (B) ACTIONS OR OTHER PROCEEDINGS TO DETERMINE, ESTABLISH, AND PROTECT RIGHTS, ¶1195–1219.
- VI. RIPARIAN AND LITTORAL RIGHTS, ¶1220–1554.
  - (A) IN GENERAL, ¶1220–1274.
  - (B) TRANSFERS, RESERVATIONS, AND EXCEPTIONS OF RIPARIAN RIGHTS, ¶1275–1309.
  - (C) INJURIES TO RIPARIAN RIGHTS IN GENERAL, ¶1310–1454.
    - 1. IN GENERAL, ¶1310–1311.
    - 2. INJURY TO DOWNSTREAM OWNERS' RIGHTS BY OBSTRUCTION OR DETENTION OF WATERS, ¶1312–1349.
    - 3. INJURY TO RIPARIAN RIGHTS BY POLLUTION OR DEPOSITS, ¶1350–1384.
    - 4. INJURY TO RIPARIAN RIGHTS BY DIVERSION OF WATERS, ¶1385–1414.

## VI. RIPARIAN AND LITTORAL RIGHTS

—Cont'd

- (C) INJURIES TO RIPARIAN RIGHTS IN GENERAL—Cont'd
    - 5. INJURY CAUSED BY ACCELERATION OF FLOW OR INCREASE IN VOLUME IN WATER-COURSE, ¶1415–1419.
    - 6. INJURY CAUSED BY DEEPENING NATURAL CHANNEL, ¶1420–1425.
    - 7. INJURIES BY FLOWAGE, OR RAISING AND SETTING BACK WATER ONTO ANOTHER'S LAND, ¶1426–1448.
    - 8. INJURY TO RIPARIAN LANDS INCIDENT TO FLOATAGE OF LOGS, ¶1449–1450.
    - 9. NUISANCE, ¶1450.1–1454.
  - (D) RIGHTS AS RIPARIAN OWNER TO BED AND BANKS OF WATER BODY IN GENERAL, ¶1455–1489.
  - (E) ACCRETION, RELICTION, AND AVULSION, ¶1490–1524.
  - (F) REGULATION AND PERMIT SYSTEMS FOR ALLOCATING RIPARIAN RIGHTS TO TAKE OR USE WATER, ¶1525–1534.
  - (G) OTHER JUDICIAL INTERVENTION, ACTIONS, AND PROCEEDINGS TO ASCERTAIN AND APPORTION RIPARIAN RIGHTS, ¶1535–1554.
- VII. APPROPRIATION OF WATERS, ¶1555–1699.
- (A) NATURE AND ELEMENTS IN GENERAL, ¶1555–1609.
  - (B) ADMINISTRATIVE REGULATION OF APPROPRIATION, ¶1610–1664.
  - (C) PRIVATE CIVIL ACTIONS TO DETERMINE, ESTABLISH, OR PROTECT RIGHTS, ¶1665–1699.
- VIII. RESERVED WATER RIGHTS, ¶1700–1733.
- IX. ARTIFICIAL PONDS, RESERVOIRS, CHANNELS, DAMS, AND OTHER WORKS, ¶1734–1764.
- X. PRESCRIPTIVE RIGHTS IN WATER OR FOR USE OR ACCESS TO WATERS, ¶1765–1819.
- XI. GENERAL ADJUDICATION OF ALL RIPARIAN, APPROPRIATIVE, RESERVED, AND OTHER RIGHTS IN WATERCOURSE, WATER BODY, OR BASIN, ¶1820–1859.
- XII. PUBLIC WATER SUPPLY, ¶1860–2289.

**405. WATER LAW****XII. PUBLIC WATER SUPPLY—Cont'd**

- (A) IN GENERAL, Ⓒ1860–1864.
- (B) DOMESTIC AND MUNICIPAL PURPOSES, Ⓒ1865–2274.
  - 1. IN GENERAL, Ⓒ1865–1884.
  - 2. LOCAL WATER DISTRICTS, Ⓒ1885–1909.
  - 3. WATER OR WATERWORKS COMPANIES, Ⓒ1910–1924.
  - 4. OTHER FRANCHISEES, Ⓒ1925–1934.
  - 5. ACQUISITION OF WATER SOURCES AND RIGHTS INCIDENT THERETO, Ⓒ1935–1954.
  - 6. RIGHTS IN LAND AND PUBLIC PLACES IN GENERAL, Ⓒ1955–1959.
  - 7. SUPPLY AND DISTRIBUTION WORKS AND APPLIANCES, Ⓒ1960–1969.
  - 8. PURITY OF WATER AND PROTECTION FROM POLLUTION OR DIVERSION, Ⓒ1970–2014.
  - 9. ACTIONS TO ESTABLISH AND PROTECT WATER RIGHTS AND OTHER RIGHTS OF PROPERTY, Ⓒ2015–2019.
  - 10. LICENSES AND TAXES, Ⓒ2020–2024.
  - 11. SUPPLY TO MUNICIPALITIES, Ⓒ2025–2035.
  - 12. SUPPLY TO PRIVATE CONSUMERS, Ⓒ2036–2079.
  - 13. REGULATION OF SUPPLY AND USE, Ⓒ2080–2129.
  - 14. WATER RATES, RENTS, CONNECTION FEES, AND OTHER CHARGES, Ⓒ2130–2244.
  - 15. INJURIES INCIDENT TO SUPPLY OR USE, Ⓒ2245–2264.
  - 16. INJURIES TO WORKS, MAINS, PIPES, OR APPLIANCES, Ⓒ2265–2269.
  - 17. PENALTIES AND OFFENSES, Ⓒ2270–2274.
- (C) MINING, MECHANICAL, AND MANUFACTURING PURPOSES, Ⓒ2275–2289.

**XIII. RECLAMATION, IRRIGATION, AND OTHER AGRICULTURAL USE, Ⓒ2290–2504.**

- (A) IN GENERAL, Ⓒ2290–2294.
- (B) RECLAMATION OF ARID LAND BY PUBLIC AUTHORITIES, Ⓒ2295–2354.
  - 1. IN GENERAL, Ⓒ2295–2299.
  - 2. RECLAMATION BY STATES, Ⓒ2300–2334.

**XIII. RECLAMATION, IRRIGATION, AND OTHER AGRICULTURAL USE—Cont'd**

- (B) RECLAMATION OF ARID LAND BY PUBLIC AUTHORITIES —Cont'd
  - 3. RECLAMATION BY UNITED STATES, Ⓒ2335–2354.
- (C) IRRIGATION AND OTHER AGRICULTURAL PURPOSES, Ⓒ2355–2504.
  - 1. IN GENERAL, Ⓒ2355–2359.
  - 2. IRRIGATION DISTRICTS, Ⓒ2360–2404.
  - 3. IRRIGATION OR DITCH COMPANIES AND ASSOCIATIONS, Ⓒ2405–2414.
  - 4. ACQUISITION OF WATER RIGHTS, AND RIGHTS INCIDENT THERETO, Ⓒ2415–2419.
  - 5. STORAGE, RESERVOIRS, DITCHES, AND CONDUITS, Ⓒ2420–2439.
  - 6. ACTIONS TO ESTABLISH AND PROTECT WATER RIGHTS AND OTHER RIGHTS OF PROPERTY, Ⓒ2440–2444.
  - 7. RIGHT TO SUPPLY OF WATER AND DUTY TO DISTRIBUTE, Ⓒ2445–2459.
  - 8. SALE OF WATER AND SUPPLY AND USE FOR IRRIGATION, Ⓒ2460–2469.
  - 9. REGULATION OF SUPPLY AND USE, Ⓒ2470–2474.
  - 10. TOLLS AND OTHER CHARGES FOR WATER, Ⓒ2475–2484.
  - 11. INJURIES INCIDENT TO SUPPLY OR USE, Ⓒ2485–2494.
  - 12. INJURIES TO CANALS, DITCHES, OR OTHER WORKS OR APPLIANCES, Ⓒ2495–2499.
  - 13. PENALTIES AND OFFENSES INCIDENT TO SUPPLY OR USE OF WATER, Ⓒ2500–2504.

**XIV. ICE, Ⓒ2505–2514.****XV. NAVIGABLE WATERS, Ⓒ2515–2704.**

- (A) IN GENERAL, Ⓒ2515–2534.
- (B) RIGHTS OF PUBLIC, Ⓒ2535–2644.
  - 1. IN GENERAL, Ⓒ2535–2539.
  - 2. IMPROVEMENT OF CHANNELS AND STREAMS, Ⓒ2540–2554.
  - 3. HARBORS, PORTS, AND TERMINALS, Ⓒ2555–2579.
  - 4. NAVIGATION, Ⓒ2580–2599.
  - 5. OBSTRUCTION OF NAVIGATION IN GENERAL, INJURY, AND REMEDIES, Ⓒ2600–2634.

**405. WATER LAW****XV. NAVIGABLE WATERS—Cont'd****(B) RIGHTS OF PUBLIC—Cont'd**

6. PUBLIC USES OTHER THAN NAVIGATION, ⚭2635–2639.

7. SEWAGE AND POLLUTION, ⚭2640–2644.

**(C) LANDS UNDER WATER,**

⚭2645–2704.

1. OWNERSHIP AND CONTROL IN GENERAL, ⚭2645–2674.

2. GRANTS TO AND ACQUISITION BY PRIVATE OWNERS OR MUNICIPALITIES, ⚭2675–2689.

3. RECLAMATION AND IMPROVEMENT, ⚭2690–2704.

**XVI. DRAINAGE OF SWAMP OR LOWLANDS BY PUBLIC AUTHORITY, ⚭2705–2849.**

(A) ESTABLISHMENT AND MAINTENANCE, ⚭2705–2799.

(B) ASSESSMENTS AND SPECIAL TAXES, ⚭2800–2849.

**XVII. LEVEES AND FLOOD CONTROL THROUGH PUBLIC WORKS, ⚭2850–2919.****XVIII. CANALS FOR NAVIGATIONAL USE, ⚭2920–2989.**

(A) ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE, ⚭2920–2969.

(B) REGULATION AND OPERATION, ⚭2970–2989.

**XIX. WEATHER MODIFICATION, ⚭2990–2991.****I. IN GENERAL.**

1000. Nature and character of water and water rights.

1001. — In general.

1002. — Realty or personalty.

1003. — Character as usufructuary property.

1004. — As appurtenant or in gross.

1005. Constitutional and statutory provisions.

1006. Ownership of, and title to, waters.

1007. — In general.

1008. — Public and private ownership.

1009. — Title to waters and water rights in lands of the United States.

1010. — Title to waters and water rights in lands of the states.

1011. — Trust imposed on public waters in general.

**I. IN GENERAL.(Cont'd)**

1012. — Abandonment, relinquishment, or other alienation of public ownership or title.

1013. Right and authority to control and conserve.

1014. — In general.

1015. — United States.

1016. — States.

1017. Conveyances, easements, covenants, and contracts in general.

1018. — In general.

1019. — Contracts.

1020. — Conveyances in general.

1021. — Reservations and exceptions.

1022. — Easements, leases, and licenses.

1023. — Mortgages and liens.

**II. COMPREHENSIVE WATER RESOURCE PLANNING AND MANAGEMENT IN GENERAL.****(A) IN GENERAL.**

1025. In general.

1026. State or district water plans and management.

1027. — In general.

1028. — Statutes, regulations, and rules.

1029. — Goals and objectives.

**(B) DISTRICTS, AGENCIES, AND OTHER ADMINISTRATIVE AUTHORITIES.**

1030. In general.

1031. Nature and purpose.

1032. Proceedings for organization.

1033. Territorial extent.

1034. Officers and employees.

1035. Powers, proceedings and review.

1036. Rights and liabilities, in general.

1037. Actions.

**(C) INTERSTATE WATER RESOURCES MANAGEMENT IN GENERAL.**

1040. In general.

1041. Restrictions on interstate diversions.

1042. Interstate compacts or other agreements.

1043. Federal regulation and oversight.

1044. — In general.

1045. — Legislative allocation in general.

1046. — Boulder Canyon Project Act.

**405. WATER LAW****(D) INTERNATIONAL WATER RESOURCES  
MANAGEMENT IN GENERAL.**

- 1050. In general.
- 1051. Treaties and other agreements or protocols.

**(E) WATER BANKING, TRUSTS, TRANSFER  
AGREEMENTS, AND WHEELING.**

- 1055. In general.
- 1056. Temporary transfers of surplus or unused water rights.
- 1057. Use of water conveyance facilities by nonowners, as part of statewide or regional planning; water wheeling.

**III. NATURAL WATERCOURSES, LAKES,  
AND PONDS IN GENERAL.**

- 1060. In general.
- 1061. Constitutional and statutory provisions.
- 1062. What constitutes a natural watercourse.
- 1063. — In general.
- 1064. — Volume of water carried.
- 1065. — Flow or current.
- 1066. — Definite channel.
- 1067. — Multiple or braided threads.
- 1068. Effect of artificial construction or changes to part of watercourse.
- 1069. Source of water supply.
- 1070. What are lakes or ponds.
- 1071. Outlets and drainage.
- 1072. — In general.
- 1073. — Outlets in general.
- 1074. — Right to drain lakes or ponds.
- 1075. Public rights in great ponds.
- 1076. Determination as to existence and nature of watercourse.
- 1077. — In general.
- 1078. — Effect of local law.
- 1079. — Evidence and witnesses.
- 1080. — Questions of fact.

**IV. GROUNDWATER: SUBTERRANEAN  
AND PERCOLATING WATERS.**

- 1083. In general.
- 1084. Nature of groundwater.
- 1085. Constitutional, statutory, and regulatory provisions in general; preemption.
- 1086. Title, ownership, and rights.
- 1087. — In general.
- 1088. — Ownership or trusteeship in State.

**IV. GROUNDWATER: SUBTERRANEAN AND  
PERCOLATING WATERS.(Cont'd)**

- 1089. — Nature of right; usufructuary.
- 1090. Administrative powers and proceedings in general.
- 1091. Rights to groundwater flowing in defined channels, generally.
- 1092. Rights to springs in general.
- 1093. Rights in owner of overlying lands, in general.
- 1094. — In general.
- 1095. — Necessity of capture and withdrawal to vest rights.
- 1096. — Rights dependent on source of supply of groundwater.
- 1097. — Limitation to reasonable amount and beneficial purpose.
- 1098. — Correlative rights of landowners.
- 1099. — Use of water.
  - (1). In general.
  - (2). Domestic purposes.
  - (3). Irrigation.
- 1100. Well permits and regulation of drilling and construction.
- 1101. — In general.
- 1102. — Hydrologic surveys.
- 1103. — Effect of comprehensive management and conservation regime.
- 1104. — Proceedings in general.
- 1105. — Applications.
- 1106. — Objections and protests.
- 1107. — Evidence.
- 1108. — Issuance of permit.
- 1109. — Terms and conditions of permit.
- 1110. — Well inspections and testing.
- 1111. — Licensing of contractors or others performing work.
- 1112. — Change in location.
- 1113. — Judicial intervention or review.
- 1114. Artesian wells.
- 1115. Liability for acts affecting natural percolation of waters in general.
- 1116. Obstruction and detention of groundwaters.
- 1117. Liability for subsidence damage.
- 1118. Prevention of waste or taking for malicious purpose.
- 1119. Conflicts as between hydrologically connected surface and groundwaters.
- 1120. Diversion.

**405. WATER LAW****IV. GROUNDWATER: SUBTERRANEAN AND PERCOLATING WATERS.(Cont'd)**

- 1121. — In general.
- 1122. — Transfer to distant lands or locations for use or sale in general; antiexportation statutes and regulations.
- 1123. — Harm to correlative rights holders; injuries to wells and springs.
- 1124. Artificial use.
- 1125. Pollution.
- 1126. — In general.
- 1127. — Economic loss doctrine; necessity of physical harm.
- 1128. — Absolute liability.
- 1129. — Negligence.
- 1130. — Persons liable in general.
- 1131. — Joint liability.
- 1132. Forfeiture or other loss of right in groundwater.
- 1133. Transfer or lease of rights in groundwater.
- 1134. — In general.
- 1135. — Transfer incident to conveyance of overlying lands.
  - (1). In general.
  - (2). Reservations and exceptions.
  - (3). Tributary and nontributary groundwater.
  - (4). Effect of prior appropriation.
- 1136. — Leases.
- 1137. — Licenses.
- 1138. — Incumbrances and liens.
- 1139. Judicial intervention, actions, and review.
- 1140. — In general.
- 1141. — Nature of remedy.
- 1142. — Preliminary injunction.
- 1143. — Time to sue, limitations, and laches.
- 1144. — Pleading.
- 1145. — Parties.
- 1146. — Trial or hearing in general.
- 1147. — Evidence.
- 1148. — Fact questions.
- 1149. — Instructions.
- 1150. — Damages.
- 1151. — Injunction.
- 1152. — Other relief.
- 1153. — Judgment or order.

**IV. GROUNDWATER: SUBTERRANEAN AND PERCOLATING WATERS.(Cont'd)**

- 1154. — Review.
- 1155. — Costs and attorney fees.
- 1156. Offenses and penalties.

**V. DIFFUSE SURFACE WATERS.****(A) IN GENERAL.**

- 1160. In general.
- 1161. What are surface waters.
- 1162. Rights, duties, and liabilities in general.
- 1163. Rights to capture, own, or use surface water.
- 1164. Rule of reasonableness in general.
- 1165. Obstruction or repulsion of flow in general.
- 1166. Common enemy doctrine; right to avoid surface waters.
- 1167. Right to have natural drainage maintained.
- 1168. Drainage or discharge.
- 1169. — In general.
- 1170. — Artificial drainage or discharge in general.
- 1171. — Discharge into natural drain or watercourse.
- 1172. — Rights and duties of railroad companies.
- 1173. — Obstruction, overflow, breakage, or seepage.
- 1174. — Persons liable.
- 1175. Easement of drainage.
- 1176. — In general.
- 1177. — Nature and extent of rights granted in general.
- 1178. — Maintenance.
- 1179. — Alteration or overburden.
- 1180. — Change in location.
- 1181. — Obstruction or disturbance.
- 1182. — Rights as against purchasers of servient estate; notice.
- 1183. Transfer of easement or other right of drainage.
- 1184. — In general.
- 1185. — Grant.
- 1186. — Contract.
- 1187. — License.
- 1188. Abandonment, forfeiture, or other loss of right or privilege of drainage.

**405. WATER LAW****V. DIFFUSE SURFACE WATERS.(Cont'd)**

- 1189. Pollution.
- 1190. Rain water and eaves drip.

**(B) ACTIONS OR OTHER PROCEEDINGS  
TO DETERMINE, ESTABLISH, AND  
PROTECT RIGHTS.**

- 1195. In general.
- 1196. Rights of action and defenses in general.
- 1197. Economic loss as grounds.
- 1198. Nuisance.
- 1199. Preliminary injunction.
- 1200. Proceedings and relief.
- 1201. — In general.
- 1202. — Time to sue, limitations, and laches.
- 1203. — Parties.
- 1204. — Pleading.
- 1205. — Evidence.
- 1206. — Hearing.
- 1207. — Instructions.
- 1208. — Compensatory damages.
- 1209. — Punitive damages.
- 1210. — Injunction.
- 1211. — Other relief.
- 1212. Review.
- 1213. Costs and attorney fees.

**VI. RIPARIAN AND LITTORAL RIGHTS.****(A) IN GENERAL.**

- 1220. In general.
- 1221. Constitutional and statutory provisions.
- 1222. Application or abrogation of common law doctrine in general.
- 1223. Coexistence of common law and riparian law regimes.
- 1224. Total or partial replacement with system of appropriative rights.
- 1225. Who are riparian owners, and what is riparian land.
- 1226. Nature and quality of waters giving rise to riparian rights.
- 1227. Effect of local law.
- 1228. Nature and extent of rights in general.
- 1229. — In general.
- 1230. — Interest in real property, or personality.
- 1231. — Title and rights in general.

**VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)**

- 1232. — Correlative rights of riparian owners.
  - (1). In general.
  - (2). Consumptive uses.
  - (3). Boating, bathing, and recreational uses.
- 1233. — Maintenance of natural flow of watercourse.
- 1234. — View of water.
- 1235. — Access to water in general.
- 1236. — Access by public or other permittees.
- 1237. — Extent of right to use water in general.
- 1238. — Reasonable use.
- 1239. — Use for domestic purposes.
- 1240. — Use for agricultural purposes.
- 1241. — Use for recreational purposes in general.
- 1242. — Fishing.
- 1243. — Rights as to seaweed.
- 1244. — Protection of banks from erosion.
- 1245. — Nonriparian uses; use on nonriparian property or beyond watershed.
- 1246. Right to wharf out, build docks, and support shore.
- 1247. — In general.
- 1248. — Right to construct or maintain.
- 1249. — Authorization by public authority to construct, and application therefor; permits.
- 1250. — Structures.
  - (1). In general.
  - (2). Wharves, docks, piers and similar structures.
  - (3). Dockminiums and common interests in structures or areas.
 

*Matters not involving riparian or littoral rights, see  
COMMON INTEREST COMMUNITIES.*
  - (4). Boat basins, revetments, and groins.
- 1251. — Appurtenance to upland property.
- 1252. — Injunction against construction or maintenance.
- 1253. — Abatement.
- 1254. Right to deepen natural channel of watercourse.
- 1255. Right to divert waters of natural watercourse.

**405. WATER LAW****VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)**

- 1256. — In general.
- 1257. — As between states.
- 1258. — Nature and extent of diversion in general.
- 1259. — Restoration of water diverted.
- 1260. — Purpose and reasonableness of use.
- 1261. Right to impound and store waters.
- 1262. — In general.
- 1263. — Storage on riparian owner's land.
- 1264. Right to flow, or to raise and set back water onto, another's land.
- 1265. — In general.
- 1266. — Constitutional and statutory provisions.
- 1267. — Nature and existence of right to flow lands in general.
- 1268. — Transfers, grants, and reservations of rights in general.
  - (1). In general.
  - (2). Construction and operation.
  - (3). Effect of transfer of ownership, control, or rights in dam.
- 1269. — Easements.
- 1270. — Licenses.
- 1271. — Abandonment, forfeiture, or other loss of right.

**(B) TRANSFERS, RESERVATIONS, AND EXCEPTIONS OF RIPARIAN RIGHTS.**

- 1275. In general.
- 1276. Construction of grant in general.
- 1277. Presumption that conveyance of land includes appurtenant riparian rights.
- 1278. Reservation or exception of rights.
- 1279. Transfer of riparian rights separate from riparian land.
- 1280. Grant of right to use wharf, dock, or pier.
- 1281. Easements over riparian lands and for access to and use of waters.
- 1282. — In general.
- 1283. — Creation and existence.
- 1284. — Extent of right in general.
- 1285. — Location.
- 1286. — Purposes and mode of use.
- 1287. — Persons entitled to use.
- 1288. — Maintenance and repair.

**VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)**

- 1289. — Alteration and misuse.
- 1290. — Right to construct or install and use ramp, dock, or other structures as incident to access easement.
- 1291. — Interference with or obstruction of right.
- 1292. — Termination.
- 1293. Leases.
- 1294. Licenses.
- 1295. Contracts.
- 1296. Loss of riparian rights in general.
- 1297. — In general.
- 1298. — Abandonment or non-use.
- 1299. — Revival of rights.

**(C) INJURIES TO RIPARIAN RIGHTS IN GENERAL.****1. IN GENERAL.**

- 1310. In general.

**2. INJURY TO DOWNSTREAM OWNERS' RIGHTS BY OBSTRUCTION OR DETENTION OF WATERS.**

- 1312. In general.
- 1313. Right to obstruct or detain waters in general.
- 1314. Reasonableness.
- 1315. Agreements between riparian owners as to obstruction and detention.
- 1316. Nature and extent of obstruction or detention.
- 1317. — In general.
- 1318. — Embankments or private levees.
- 1319. — Dams.
- 1320. — Bridges, trestles, and culverts.
- 1321. Causation.
- 1322. Persons liable.
- 1323. Removal or abatement of obstruction or encroachment.
- 1324. Judicial intervention, actions, and review.
- 1325. — In general.
- 1326. — Nature of remedy.
- 1327. — Right of action in general.
- 1328. — Defenses in general.
- 1329. — Preliminary injunction.
- 1330. — Time to sue, limitations, and laches.
- 1331. — Pleading.
- 1332. — Parties.



**405. WATER LAW****VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)**

- 1333. — Trial or hearing in general.
- 1334. — Evidence.
- 1335. — Fact questions.
- 1336. — Instructions.
- 1337. — Findings and verdict.
- 1338. — Damages.
- 1339. — Injunction.
- 1340. — Other relief.
- 1341. — Judgment or order.
- 1342. — Review.
- 1343. — Costs and attorney fees.

**3. INJURY TO RIPARIAN RIGHTS BY POLLUTION OR DEPOSITS.**

- 1350. In general.
- 1351. Reasonableness of use that decreases purity.
- 1352. Acquisition by grant or purchase of right to pollute.
- 1353. Rights as to purity of water.
- 1354. Nature and extent of pollution in general.
- 1355. Mines and mining operations.
- 1356. Mills and factories.
- 1357. Noxious uses.
- 1358. Sewage and refuse matter.
- 1359. Dredging and disturbance of bed and banks.
- 1360. Persons entitled to relief.
- 1361. Persons liable.
- 1362. Removal or abatement of cause of pollution.
- 1363. Judicial intervention, actions, and review.
- 1364. — In general.
- 1365. — Nature of remedy.
- 1366. — Right of action in general.
- 1367. — Defenses in general.
- 1368. — Preliminary injunction.
- 1369. — Time to sue, limitations, and laches.
- 1370. — Pleading.
- 1371. — Parties.
- 1372. — Trial or hearing in general.
- 1373. — Evidence.
- 1374. — Fact questions.
- 1375. — Instructions.
- 1376. — Findings and verdict.
- 1377. — Damages.

**VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)**

- 1378. — Injunction.
- 1379. — Other relief.
- 1380. — Judgment or order.
- 1381. — Review.
- 1382. — Costs and attorney fees.

**4. INJURY TO RIPARIAN RIGHTS BY DIVERSION OF WATERS.**

- 1385. In general.
- 1386. Statutory provisions.
- 1387. Nature and extent of diversion in general.
- 1388. Restoration of water diverted; unreasonable diminution of current.
- 1389. Persons liable.
- 1390. Removal or abatement of means or cause of diversion.
- 1391. Judicial intervention, actions, and review.
- 1392. — In general.
- 1393. — Nature of remedy.
- 1394. — Right of action in general.
- 1395. — Defenses in general.
- 1396. — Preliminary injunction.
- 1397. — Time to sue, limitations, and laches.
- 1398. — Pleading.
- 1399. — Parties.
- 1400. — Trial or hearing in general.
- 1401. — Evidence.
- 1402. — Fact questions.
- 1403. — Instructions.
- 1404. — Findings and verdict.
- 1405. — Damages.
- 1406. — Injunction.
- 1407. — Other relief.
- 1408. — Judgment or order.
- 1409. — Review.
- 1410. — Costs and attorney fees.

**5. INJURY CAUSED BY ACCELERATION OF FLOW OR INCREASE IN VOLUME IN WATERCOURSE.**

- 1415. In general.

**6. INJURY CAUSED BY DEEPENING NATURAL CHANNEL.**

- 1420. In general.



**405. WATER LAW****7. INJURIES BY FLOWAGE, OR RAISING  
AND SETTING BACK WATER ONTO  
ANOTHER'S LAND.**

- 1426. In general.
- 1427. Floods and freshets.
- 1428. Persons liable.
- 1429. Judicial intervention, actions, and review.
- 1430. — In general.
- 1431. — Nature of remedy.
- 1432. — Right of action in general.
- 1433. — Defenses in general.
- 1434. — Preliminary injunction.
- 1435. — Time to sue, limitations, and laches.
- 1436. — Pleading.
- 1437. — Parties.
- 1438. — Trial or hearing in general.
- 1439. — Evidence.
- 1440. — Fact questions.
- 1441. — Instructions.
- 1442. — Findings and verdict.
- 1443. — Damages.
- 1444. — Injunction.
- 1445. — Other relief.
- 1446. — Judgment or order.
- 1447. — Review.
- 1448. — Costs and attorney fees.

**8. INJURY TO RIPARIAN LANDS INCIDENT  
TO FLOATAGE OF LOGS.**

- 1449. In general.

**9. NUISANCE.**

- 1450.1. In general.
- 1450.2. Obstruction or detention of waters.
- 1450.3. Pollution or deposits.
- 1450.4. Diversion of waters.
- 1450.5. Acceleration of flow or increase in volume.
- 1450.6. Deepening natural channel.
- 1450.7. Flowage.
- 1450.8. Floatage of logs.

**(D) RIGHTS AS RIPARIAN OWNER TO BED AND  
BANKS OF WATER BODY IN GENERAL.**

- 1455. In general.
- 1456. Statutory provisions.
- 1457. Rights to bed in general.
- 1458. Rights to land between low and high water mark.

**VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)**

- 1459. Rights to flats, sandbars, and islands in general.
  - 1460. Rights in formations resulting from deposit of dredged material.
  - 1461. Rights in personal property or debris washed or stranded upon riparian land.
  - 1462. Rights in bed upon subsidence or recession of waters.
  - 1463. Allocation or division as between riparian owners.
  - 1464. — In general.
  - 1465. — Extension of ownership to thread of channel or center of lake or pond.
  - 1466. Protection and use in general.
  - 1467. Right of reclamation and improvement.
  - 1468. Conveyance of rights.
  - 1469. Proceedings or actions to determine rights.
  - 1470. — In general.
  - 1471. — Nature of remedy.
  - 1472. — Right of action and defenses in general.
  - 1473. — Nuisance.
  - 1474. — Preliminary injunction.
  - 1475. — Time to sue, limitations, and laches.
  - 1476. — Pleading.
  - 1477. — Parties.
  - 1478. — Trial or hearing in general.
  - 1479. — Evidence.
  - 1480. — Fact questions.
  - 1481. — Instructions.
  - 1482. — Findings and verdict.
  - 1483. — Damages.
  - 1484. — Injunction.
  - 1485. — Other relief.
  - 1486. — Judgment or order.
  - 1487. — Review.
  - 1488. — Costs and attorney fees.
- (E) ACCRETION, RELICTION, AND AVULSION.**
- 1490. In general.
  - 1491. What constitutes accretion or reliction.
  - 1492. Title to land formed by accretion or lost through reliction; effect on adjacent owners' boundaries.
  - 1493. — In general.

**405. WATER LAW****VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)**

- 1494. — Conveyance or lease of riparian or littoral land as including accretions.
- 1495. — Severance of accretions from original lands.
- 1496. — Apportionment of lands formed by accretion.
- 1497. — Separate grant of lands formed by accretion.
- 1498. — Batture.
- 1499. Actions to establish rights in accreted lands.
- 1500. — In general.
- 1501. — Nature of remedy.
- 1502. — Right of action and defenses in general.
- 1503. — Preliminary injunction.
- 1504. — Time to sue, limitations, and laches.
- 1505. — Pleading.
- 1506. — Parties.
- 1507. — Trial or hearing in general.
- 1508. — Evidence.
- 1509. — Fact questions.
- 1510. — Instructions.
- 1511. — Findings and verdict.
- 1512. — Damages.
- 1513. — Injunction.
- 1514. — Other relief.
- 1515. — Judgment or order.
- 1516. — Review.
- 1517. — Costs and attorney fees.
- 1518. Avulsion.
- 1519. — In general.
- 1520. — What constitutes avulsion.
- 1521. — Title to land opened up or cut off by event; effect on adjacent owners' boundaries.
- 1522. — Actions or proceedings to determine rights after avulsion event.
  - (1). In general.
  - (2). Nature of remedy.
  - (3). Right of action and defenses in general.
  - (4). Time to sue, limitations, and laches.
  - (5). Pleading.
  - (6). Parties.
  - (7). Trial or hearing in general.

**VI. RIPARIAN AND LITTORAL RIGHTS.(Cont'd)**

- (8). Evidence.
- (9). Fact questions.
- (10). Instructions.
- (11). Findings and verdict.
- (12). Judgment or order.
- (13). Review.
- (14). Costs and attorney fees.

**(F) REGULATION AND PERMIT SYSTEMS FOR ALLOCATING RIPARIAN RIGHTS TO TAKE OR USE WATER.**

- 1525. In general.
- 1526. Statutory provisions.
- 1527. Limitation on rights inherent in riparian property ownership.
- 1528. Exemptions.
- 1529. Matters peculiar to hybrid or dual-doctrine systems of allocation.
- 1530. Eligibility and permit criteria.
- 1531. Permit provisions and conditions.
- 1532. Administrative proceedings.
- 1533. Judicial intervention or review.

**(G) OTHER JUDICIAL INTERVENTION, ACTIONS, AND PROCEEDINGS TO ASCERTAIN AND APPORTION RIPARIAN RIGHTS.**

- 1535. In general.
- 1536. Nature of remedy.
- 1537. Right of action and defenses in general.
- 1538. Preliminary injunction.
- 1539. Time to sue, limitations, and laches.
- 1540. Pleading.
- 1541. Parties.
- 1542. Trial or hearing in general.
- 1543. Evidence.
- 1544. Fact questions.
- 1545. Instructions.
- 1546. Findings and verdict.
- 1547. Injunction.
- 1548. Other relief.
- 1549. Judgment or order.
- 1550. Review.
- 1551. Costs and attorney fees.

**VII. APPROPRIATION OF WATERS.****(A) NATURE AND ELEMENTS IN GENERAL.**

- 1555. In general.
- 1556. Constitutional and statutory provisions.

**405. WATER LAW****VII. APPROPRIATION OF WATERS.(Cont'd)**

- 1557. Consideration of public interest and public trust.
- 1558. Matters peculiar to appropriation of rights in public lands, in general.
- 1559. Waters and water rights subject to appropriation.
- 1560. — In general.
- 1561. — Free-flowing waters in general.
- 1562. — Tributary groundwater.
- 1563. — Waters in public domain.
- 1564. — Waters within interstate water-courses.
- 1565. — Federal reserved waters in general.
- 1566. — Waters reserved for Indian tribes or communities.
- 1567. Persons entitled to appropriate water or rights.
- 1568. Effect of state and local law, customs, and rules.
- 1569. Purposes and lands for which water may be appropriated.
- 1570. Nature and elements of appropriation.
- 1571. — In general.
- 1572. — Intent as to use of water; anti-speculation doctrine.
- 1573. — Actual capture and diversion of water.
- 1574. — Actual use of water and application to beneficial use.
- 1575. — Notice of appropriation.
- 1576. — Diligence in completion of works or application of water to use.
- 1577. Vesting of rights under appropriation in general.
- 1578. Priorities.
- 1579. — In general.
- 1580. — First in time, first in right.
- 1581. — Date of appropriation.
- 1582. — Calls by senior rights holders in general.
- 1583. — Futile call doctrine.
- 1584. — Delivery call petition by senior user.
- 1585. — Subordination agreements.
- 1586. — Effect of hybrid or dual-doctrine jurisdiction.

**VII. APPROPRIATION OF WATERS.(Cont'd)**

- 1587. — Priorities as against subsequent grants, entries, and patents in public lands.
- 1588. Nature and extent of rights acquired.
- 1589. — In general.
- 1590. — Rights as appurtenant to land.
- 1591. — Location of diversion point.
- 1592. — Augmentation, replacement, and substitute supply plans.
- 1593. — Quantity of water.
  - (1). In general.
  - (2). Amounts necessary for purposes of appropriation.
  - (3). Limits imposed by beneficial use requirement.
  - (4). Waste.
  - (5). Effect of senior riparian rights.
  - (6). Capacity of appropriator's system or works.
- 1594. — Use, recapture, and reuse of water; exclusive use.
- 1595. — Transbasin or interbasin diversions.
- 1596. — Storage of water.
- 1597. — Incidental rights to burden others' lands to access or convey water.
  - (1). In general.
  - (2). Canals, ditches, and other works.
  - (3). Condemnation of rights of way and other interests in lands.
  - (4). Trespass liability.
- 1598. Transfers or conveyances and contracts in general.
- 1599. Change in place, manner, or purpose of appropriation, diversion, or use of water.
- 1600. — In general.
- 1601. — Quantity; enlargement or additional appropriation.
- 1602. — Supplemental wells; Templeton doctrine.
- 1603. — Water exchanges.
- 1604. — Proceedings on application to amend permit or decree, or to transfer rights.
- 1605. — Review.
- 1606. Abandonment, relinquishment, cancellation, or forfeiture of rights.
- 1607. — In general.

**405. WATER LAW****VII. APPROPRIATION OF WATERS.(Cont'd)**

1608. — Resumption of use doctrine.  
 1609. — Proceedings to determine rights.

**(B) ADMINISTRATIVE REGULATION  
OF APPROPRIATION.**

1610. In general.  
 1611. Statutory provisions.  
 1612. Administrative bodies, in general.  
 1612.5. — In general.  
 1613. — Powers and authority.  
 1614. — Duties.  
 1615. State and local engineers, water masters, and other officers.  
 1616. — In general.  
 1617. — Appointment.  
 1618. — Powers and authority.  
 1619. — Duties.  
 1620. Rules and regulations, in general.  
 1621. Federal appropriation and local water law.  
 1622. Availability; prevention of overdraft, exploitation, groundwater mining, and other depletion of resources.  
 1623. Moratorium on appropriation.  
 1624. Application for permits to appropriate water.  
 1625. — In general.  
 1626. — Necessity for permit in general.  
 1627. — New or enlarged appropriations.  
 1628. — Notice.  
 1629. — Requisites and sufficiency, in general.  
 1630. — Specification of points of diversion and return.  
 1631. — Specification of quantities to be appropriated.  
 1632. — Blanket permits.  
 1633. — Fees for filing and recording.  
 1634. Permit pending diversion of waters and application to beneficial use in general.  
 1635. — In general.  
 1636. — Grant or denial.  
 1637. — Time to complete requisite steps for appropriation.  
 1638. — Extension of permit; excuses for delay and objections to extension.  
     (1). In general.  
     (2). Excuses for delay.

**VII. APPROPRIATION OF WATERS.(Cont'd)**

- (3). Objections to extension.  
 1639. Terms and conditions of permit.  
 1640. — In general.  
 1641. — Reporting requirements.  
 1642. — Public access to waters impounded or diverted.  
 1643. Cancellation or forfeiture of permit.  
 1644. Water rights certificate.  
 1645. — In general.  
 1646. — Issuance.  
 1647. — Amendment.  
 1648. — Cancellation or forfeiture.  
 1649. Administrative proceedings and review.  
 1650. — In general.  
 1651. — Jurisdiction.  
 1652. — Time for proceedings.  
 1653. — Parties.  
 1654. — Evidence.  
 1655. — Fact questions.  
 1656. — Findings.  
 1657. — Determination.  
 1658. — Judicial review.

**(C) PRIVATE CIVIL ACTIONS TO DETERMINE,  
ESTABLISH, OR PROTECT RIGHTS.**

1665. In general.  
 1666. Form of remedy.  
 1667. Rights of action and defenses; standing.  
 1668. Conversion of private suit to one of general adjudication.  
 1669. — In general.  
 1670. — Grounds.  
 1671. Injunction and enforcement.  
 1672. Jurisdiction and venue.  
 1673. Limitations and laches.  
 1674. Parties.  
 1675. — In general.  
 1676. — Necessary parties.  
 1677. Process or notice.  
 1678. Reference; appointment of water master or viewers.  
 1679. Pleading.  
 1680. Evidence.  
 1680.5. — In general.  
 1681. — Presumptions and burden of proof.  
 1682. — Admissibility.

**405. WATER LAW****VII. APPROPRIATION OF WATERS.(Cont'd)**

- 1683. — Weight and sufficiency.
- 1684. Trial or hearing.
- 1685. — In general.
- 1686. — Questions of fact.
- 1687. — Findings and verdict.
- 1688. Judgment or decree.
- 1689. — In general.
- 1690. — Conclusiveness and effect.
  - (1). In general.
  - (2). Matters concluded.
  - (3). Persons concluded.
- 1691. Relief awarded.
- 1692. — In general.
- 1693. — Physical solution doctrine.
- 1694. — Damages.
- 1695. Rehearing and review.
- 1696. Costs and attorney fees.

**VIII. RESERVED WATER RIGHTS.**

- 1700. In general.
- 1701. Incident to reservation or withdrawal of lands from public domain.
- 1702. — In general.
- 1703. — Waters necessary for primary purpose of federal reservation.
- 1704. — Implied reservation of water rights.
- 1705. — Waters reserved for purposes of Indian reservations in general.
- 1706. Limitation to unappropriated waters in general.
- 1707. Public water reserves.
- 1708. Effect of state law in general.
- 1709. Time of vesting of reserved water rights.
- 1710. — In general.
- 1711. — Date of reservation of lands.
- 1712. — Priorities and notice.
- 1713. Requisites for reservation of water rights.
- 1714. — In general.
- 1715. — Intent to reserve unappropriated waters.
- 1716. — Necessity of physical diversion or appropriation.
- 1717. — Necessity of application to beneficial use.

**VIII. RESERVED WATER RIGHTS.(Cont'd)**

- 1718. Nature of rights, title, or interest in reserved water.
- 1719. Waters reserved.
- 1720. — In general.
- 1721. — Groundwater.
- 1722. — Natural watercourses, lakes, and ponds.
- 1723. — Diffuse surface waters.
- 1724. — Waters beyond reservation boundaries.
- 1725. Quantity of water reserved.
- 1726. — In general.
- 1727. — Sufficiency to accomplish purposes of land reservation; primary and secondary purposes.
- 1728. — Time for determination of purposes.
- 1729. — Procedures for additional appropriations; effect of state law.
- 1730. Conveyance, sale, disposal, or other transfer of reserved rights.
- 1731. Loss of reserved rights through non-use, abandonment, forfeiture, or other cause.

**IX. ARTIFICIAL PONDS, RESERVOIRS, CHANNELS, DAMS, AND OTHER WORKS.**

- 1734. In general.
- 1735. Right to collect and detain water in general.
- 1736. Rights in artificial watercourses in general.
- 1737. Title to bed under impounded waters.
- 1738. Right to erect and maintain dams in general.
- 1739. Construction and maintenance of dams.
- 1740. — In general.
- 1741. — Rights and title to water impounded.
- 1742. — Regulatory inspection of dams.  
*Issues relating to hydroelectric generating facilities, see ELECTRICITY.*
- 1743. Artificial ponds, watercourses, conduits, and other works.
- 1744. — In general.
- 1745. — Construction.
- 1746. — Maintenance and repairs.
- 1747. Draining mill ponds.
- 1748. Injuries to dams or other works.

**405. WATER LAW****IX. ARTIFICIAL PONDS, RESERVOIRS,  
CHANNELS, DAMS, AND OTHER  
WORKS.(Cont'd)**

- 1749. Injuries by overflow, breakage, leakage, or seepage from artificial water-courses or impoundments.
- 1750. Right and duty to prevent injury; contributory negligence.
- 1751. Removal or abatement of dams or other works.
- 1752. — In general; obligation to remove or abate.
- 1753. — Right to remove or abate, and rights and liabilities as to affected waters.
- 1754. Judicial intervention, actions, and review.
- 1755. — In general.
- 1756. — Rights of action and defenses.
- 1757. — Time to sue, limitations, and laches.
- 1758. — Injunction.
  - (1). In general.
  - (2). Nature and grounds of remedy.
  - (3). Estoppel, limitations, and laches.
  - (4). Enforcement.
- 1759. — Damages.
  - (1). In general.
  - (2). Measure or amount.
- 1760. — Proceedings and review.
  - (1). In general.
  - (2). Parties and pleading.
  - (3). Presumptions and burden of proof.
  - (4). Admissibility of evidence.
  - (5). Weight and sufficiency of evidence.
  - (6). Instructions.
  - (7). Hearing, determination, and relief.
  - (8). Review.

**X. PRESCRIPTIVE RIGHTS IN WATER OR  
FOR USE OR ACCESS TO WATERS.**

- 1765. In general.
- 1766. By and against whom prescriptive rights may be acquired.
- 1767. Waters in which prescriptive rights may be established.
- 1768. — In general.

**X. PRESCRIPTIVE RIGHTS IN WATER  
OR FOR USE OR ACCESS TO  
WATERS.(Cont'd)**

- 1769. — Rights in irrigation ditch and waters.
  - (1). In general.
  - (2). Adverse possession of adjudicated priorities.
- 1770. Elements of prescription.
- 1771. — In general.
- 1772. — Mode and extent of use.
- 1773. — Adverse character of use and possession in general.
- 1774. — Visible and notorious use or possession.
- 1775. — Distinct and exclusive possession.
- 1776. — Time requisite; continuity and interruption.
- 1777. — Hostile character of use and possession in general.
- 1778. — Claim or color of right.
- 1779. Nature and extent of right acquired in general.
- 1780. Rights to use water.
- 1781. — In general.
- 1782. — Natural watercourses, lakes, and ponds.
- 1783. — Surface waters.
- 1784. — Groundwater.
- 1785. Rights to obstruct or redirect water.
- 1786. — In general.
- 1787. — Obstruction or repulsion.
- 1788. — Drainage and discharge.
- 1789. — Right to flow lands by raising and setting back water onto another's lands.
- 1790. Rights of access.
- 1791. Right to use ramp, dock, or pier.
- 1792. Loss or other termination of prescriptive rights.
- 1793. Judicial intervention, actions, and review.
- 1794. — In general.
- 1795. — Nature of remedy.
- 1796. — Right of action and defenses.
- 1797. — Preliminary injunction.
- 1798. — Time to sue, limitations, and laches.
- 1799. — Pleading.
- 1800. — Parties.

**405. WATER LAW****X. PRESCRIPTIVE RIGHTS IN WATER  
OR FOR USE OR ACCESS TO  
WATERS.(Cont'd)**

- 1801. — Trial or hearing in general.
- 1802. — Evidence.
- 1803. — Fact questions.
- 1804. — Instructions.
- 1805. — Findings and verdict.
- 1806. — Damages.
- 1807. — Injunction.
- 1808. — Other relief.
- 1809. — Judgment or order.
- 1810. — Review.
- 1811. — Costs and attorney fees.

**XI. GENERAL ADJUDICATION OF ALL RIPARI-  
AN, APPROPRIATIVE, RESERVED, AND  
OTHER RIGHTS IN WATERCOURSE, WA-  
TER BODY, OR BASIN.**

- 1820. In general.
- 1821. What law governs.
- 1822. Form of remedy.
- 1823. Rights of action and defenses; stand-  
ing.
- 1824. Conversion of private suit to one of  
general adjudication.
- 1825. — In general.
- 1826. — Grounds.
- 1827. Scope of inquiry on general adjudica-  
tion.
- 1828. McCarran consent to adjudicate water  
rights of United States in state court.
- 1829. Injunction and enforcement.
- 1830. Jurisdiction and venue.
- 1831. Limitations and laches.
- 1832. Parties.
- 1833. — In general.
- 1834. — Necessary parties.
  - (1). In general.
  - (2). States and United States.
- 1835. Process or notice.
- 1836. Reference; appointment of water mas-  
ter or viewers.
- 1837. Report and recommendation of state  
engineer.
- 1838. Pleading.
- 1839. Evidence.
- 1839.5. — In general.
- 1840. — Presumptions and burden of  
proof.

**XI. GENERAL ADJUDICATION OF ALL RIPARI-  
AN, APPROPRIATIVE, RESERVED, AND  
OTHER RIGHTS IN WATERCOURSE, WA-  
TER BODY, OR BASIN.(Cont'd)**

- 1841. — Admissibility.
- 1842. — Weight and sufficiency.
- 1843. Trial or hearing.
- 1844. — In general.
- 1845. — Questions of fact.
- 1846. — Findings and verdict.
- 1847. Judgment or decree.
- 1848. — In general.
- 1849. — Conclusiveness and effect.
  - (1). In general.
  - (2). Matters concluded.
  - (3). Persons concluded.
- 1850. Relief awarded.
- 1851. — In general.
- 1852. — Physical solution doctrine.
- 1853. — Mass allocation as between states.
- 1854. — Equitable apportionment as be-  
tween states.
- 1855. — Damages.
- 1856. Rehearing and review.
- 1857. Costs and attorney fees.

**XII. PUBLIC WATER SUPPLY.****(A) IN GENERAL.**

- 1860. In general.
- 1861. Regulation and control by state and  
state authorities.
- 1862. Federal participation in developing wa-  
ter supplies.

**(B) DOMESTIC AND MUNICIPAL PURPOSES.****1. IN GENERAL.**

- 1865. In general.
- 1866. Nature and extent of right to water.
- 1867. Constitutional and statutory provisions.
- 1868. Establishment or acquisition of works  
by public authorities.
- 1869. — In general.
- 1870. — Acting in governmental or pro-  
prietary capacity.
- 1871. — Submission to voters.
- 1872. — Effect of grant of privilege or  
franchise.
- 1873. — Funds and financing.

**405. WATER LAW****XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 1874. — Acquisition by purchase or condemnation in general.
- 1875. — Option to purchase from franchise holder and exercise thereof in general.
- 1876. — Valuation of property sought to be acquired and payment therefor.
- 1877. — Title and rights acquired and obligations assumed.
- 1878. — Use and ownership.
- 1879. — Operation, maintenance, and control.
- 1880. — Sale or lease of waterworks.

**2. LOCAL WATER DISTRICTS.**

*For comprehensive water resource management districts, see II.*

- 1885. In general.
- 1886. Nature and existence of district.
- 1887. Formation.
- 1888. — In general.
- 1889. — Proceedings in general.
- 1890. — Petition.
- 1891. — Election.
- 1892. — Objections.
- 1893. — Review.
- 1894. Boundaries and annexation.
- 1895. Consolidation or splitting of district.
- 1896. Dissolution or discontinuance.
- 1897. Officers, employees, and agents.
- 1898. Powers and authority in general.
- 1899. Extraterritorial authority, activities, or services.
- 1900. Contracts.
- 1901. Service plan.
- 1902. Duties, liabilities, and immunity.
- 1903. Issuance of bonds.
- 1904. Tax levies, assessments, and liens.
- 1905. Special assessment districts or areas.
- 1906. Judicial intervention, actions, and review.

**3. WATER OR WATERWORKS COMPANIES.**

- 1910. In general.
- 1911. Incorporation and organization.
- 1912. Capital, stock, and stockholders; proxy voting.
- 1913. Officers and agents.
- 1914. Franchises, privileges, and powers.

**XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 1915. — In general.
- 1916. — Proceedings to obtain franchises.
- 1917. — Nature and scope in general.
- 1918. — Agency or instrumentality of municipality to take or divert water.
- 1919. — Territory.
- 1920. — Duration, extension, and termination.
- 1921. — Forfeiture or annulment.
- 1922. — Disposition of property or franchise.
- 1923. — Mortgages and bonds.

**4. OTHER FRANCHISEES.**

- 1925. In general.
- 1926. Franchises to private individuals.
- 1927. — In general.
- 1928. — Status as public utilities.
- 1929. — Powers and duties.
- 1930. — Duration.
- 1931. — Cancellation, forfeiture, or other termination.

**5. ACQUISITION OF WATER SOURCES AND RIGHTS INCIDENT THERETO.**

- 1935. In general.
- 1936. Limitation to use for public water supply purposes.
- 1937. Reasonable use.
- 1938. Allocation of rights in water resources among public entities, or between public entity and private claimants.
- 1939. — In general.
- 1940. — Diversion of watercourse.
- 1941. — Withdrawal of groundwater.
- 1942. — Priority of domestic and municipal water use.
- 1943. Water supply permit.
- 1944. Pueblo rights.
- 1945. Grants.
- 1946. Contracts.
- 1947. Licenses.
- 1948. Right to recapture return waters.
- 1949. Abandonment or loss of rights acquired.
- 1950. Proceedings or actions to determine, establish, and protect rights.



**405. WATER LAW****6. RIGHTS IN LAND AND PUBLIC PLACES IN GENERAL.**

- 1955. In general.
- 1956. Right of way and other limited interests in land.
- 1957. Rights in streets and other public places.

**7. SUPPLY AND DISTRIBUTION WORKS AND APPLIANCES.**

- 1960. In general.
- 1961. Construction.
- 1962. Contracts.
- 1963. Maintenance and repair.
- 1964. Reservoirs, conduits, pumping stations, wells, and other works.
- 1965. Mains, pipes, and appliances for distribution.
- 1966. Injuries from establishment or construction of works.

**8. PURITY OF WATER AND PROTECTION FROM POLLUTION OR DIVERSION.**

- 1970. In general.
- 1971. Statutory and regulatory provisions.
- 1972. — In general.
- 1973. — Construction.
- 1974. Purity and fitness of water for domestic use and consumption.
- 1975. Establishment of agencies, departments, or boards.
- 1976. Water quality standards.
- 1977. — In general.
- 1978. — Power and authority to establish maximum contaminant levels.
- 1979. — Duty to adopt and enforce quality standards, in general.
- 1980. — Regulation, in general.
- 1981. — Effect of federal drinking water standards.
- 1982. — Primary enforcement responsibility.
- 1983. — Water testing and methodologies.
- 1984. — Particular contaminants.
- 1985. — Waters subject to quality regulation, in general.
- 1986. — Public or private sources and uses.
- 1987. — Water distributed for human consumption.

**XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 1988. — Swimming pools, spas, and bathing houses.
- 1989. Proceedings or actions to compel filtration or other treatment.
- 1990. Receivership, and divestiture of non-performing systems.
- 1991. Civil claims arising from failure to meet quality standards.
- 1992. Permits for or restrictions on activities that endanger water quality.
- 1993. — In general.
- 1994. — Recreational uses.
- 1995. — Siting of facilities.
- 1996. — Discharge of waste.
- 1997. — Injection wells.
- 1998. Liability for pollution or endangerment of domestic water supply.
- 1999. — In general.
- 2000. — Discharge or release of contaminants.
- 2001. — Remedies and actions, in general.
- 2002. — Persons or entities entitled to relief.
- 2003. — Persons or entities liable.
- 2004. — Injunction.
- 2005. — Actions.
- 2006. — Prosecutions.
- 2007. — Clean-up and remediation.
- 2008. — Penalties.
- 2009. Fluoridation of water supply.
- 2010. Diverting or impeding flow of waters intended for domestic use.

**9. ACTIONS TO ESTABLISH AND PROTECT WATER RIGHTS AND OTHER RIGHTS OF PROPERTY.**

- 2015. In general.

**10. LICENSES AND TAXES.**

- 2020. In general.

**11. SUPPLY TO MUNICIPALITIES.**

- 2025. In general.
- 2026. Contracts in general.
- 2027. Construction and operation.
- 2028. Performance and breach in general.
- 2029. Quantity and pressure.
- 2030. Compensation or charges.
- 2031. Modification of contract.
- 2032. Abandonment.

**405. WATER LAW****XII. PUBLIC WATER SUPPLY.(Cont'd)**

2033. Rescission, cancellation, or other termination.

**12. SUPPLY TO PRIVATE CONSUMERS.**

- 2036. In general.
- 2037. Right and duty to supply in general.
- 2038. Moratorium on new connections or increased usage.
- 2039. Application for water service connection.
- 2040. — In general.
- 2041. — Form and requisites.
- 2042. — Grant or denial.
- 2043. — Judicial remedies; injunction.
- 2044. Discrimination in supplying water to customers.
- 2045. — In general.
- 2046. — Effect of supplying water beyond corporate limits.  
*Rate discrimination, see ¶2165.*
- 2047. Agreements to furnish water.
- 2048. — In general.
- 2049. — Parties.
- 2050. — Validity and enforceability.
- 2051. — Construction of contract, generally.
- 2052. — Terms and conditions.
- 2053. — Quantity of water contemplated by contract.
- 2054. — Performance and breach.
- 2055. — Duration, in general.
- 2056. — Termination, and grounds therefor.
- 2057. — Injunction against discontinuance of service.
- 2058. — Wrongful termination or discontinuance.
- 2059. Abandoning service.
- 2060. Contracts for construction of works to supply water.
- 2061. — In general.
- 2062. — Deposit paid against construction costs, and return.
- 2063. — Ownership and control of works.
- 2064. — Authority and duty to operate and maintain.
- 2065. Provider's authority to dispose of surplus water.
- 2066. Transfer of water company or works.

**XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 2067. — In general.
- 2068. — Assignment of contracts.
- 2069. — Effect on rights and obligations to furnish water.
- 2070. Actions.
- 2071. — In general.
- 2072. — Persons entitled to sue.
- 2073. — Persons liable.
- 2074. — Trial or hearing.
- 2075. — Evidence.
- 2076. — Questions for jury.
- 2077. — Instructions.
- 2078. — Damages.

**13. REGULATION OF SUPPLY AND USE.**

- 2080. In general.
- 2081. Statutory and regulatory provisions and rules in general.
- 2082. Power and duty to regulate, conserve, and manage water resources in general.
- 2083. State and local control.
- 2084. Public interest.
- 2085. Public regulatory commissions, boards, and officers.
- 2086. — In general.
- 2087. — Powers and duties.
- 2088. — Proceedings in general.
- 2089. — Judicial intervention and review.
- 2090. Entities, systems, and persons subject to public utilities regulation.
- 2091. — In general.
- 2092. — Whether provider is a public utility.
- 2093. — Exemptions in general.
- 2094. — Municipally owned facilities.
- 2095. Certificates of public convenience and necessity.
- 2096. — In general.
- 2097. — Eligibility and application.
- 2098. — Proceedings on application, and issuance.
- 2099. — Transfer of certificate.
- 2100. — Abandonment of certificate.
- 2101. — Forfeiture or other termination of certificate.
- 2102. Water distribution permits for private systems.
- 2103. Service areas.

**405. WATER LAW****XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 2104. — In general.
- 2105. — Areas within or adjacent to municipality.
- 2106. — Unincorporated areas.
- 2107. — Service agreements between providers.
- 2108. — Municipal water delivery strategies for supply to unincorporated or extraterritorial areas.
- 2109. — Disputes in general.
- 2110. — Priorities and first-in-field doctrine.
- 2111. — Encroachment and curtailment in general.
- 2112. — Statutorily protected service areas.
- 2113. — Expansion of service area.
- 2114. — Abandonment or discontinuance of service to area.
- 2115. — Proceedings to resolve disputes.
- 2116. Compulsory connection to centralized public water supply, and termination of use of wells.
- 2117. Conditions or exactions incident to connecting to public system.
- 2118. Requirements for metering.
- 2119. Shut-off of supply for violation of rules and regulations.
- 2120. Moratorium on new or increased level of service.
- 2121. Emergency conservation, safety, and public welfare restrictions on water usage.
- 2122. — In general.
- 2123. — Curtailment of particular uses.
- 2124. — Quantity restrictions and per capita usage limits.
- 2125. — Restricting exportation of water outside service area.
- 2126. Agreements for use of unused system transport capacity; requirements of wheeling statutes.

**14. WATER RATES, RENTS, CONNECTION FEES, AND OTHER CHARGES.**

- 2130. In general.
- 2131. Right to make charge in general.
- 2132. — In general.
- 2133. — Compulsory connection to municipal supply.

**XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 2134. — Contractual services and rates.
- 2135. Initiative and referendum.
- 2136. Persons or entities subject to charges.
- 2137. — In general.
- 2138. — Landlord and tenant.
- 2139. — Users and nonusers.
- 2140. — Transfer of ownership of property served.
- 2141. Types of charges and fees.
- 2142. — In general.
- 2143. — Connection and capitalization fees.
- 2144. — Impact fees.
- 2145. — Standby and availability charges.
- 2146. — Charge for fire protection service.
- 2147. — Minimum periodic service charges.
- 2148. — Compensation for wheeling use of system transport capacity.
- 2149. Charges as taxes or assessments.
- 2150. — In general.
- 2151. — Necessity of voter approval.
- 2152. Billing.
- 2153. — In general.
- 2154. — Statements and enclosures.
- 2155. — Billing period or cycle.
- 2156. — Disputes as to charges.
- 2157. Funds.
- 2158. — In general.
- 2159. — Deposits.
- 2160. — Surplus funds.
- 2161. Water illegally taken.
- 2162. — In general.
- 2163. — Nature and form of remedy.
- 2164. — Persons liable.
- 2165. Uniformity of charges.
- 2166. — In general.
- 2167. — Similar situations, classifications, or categories.
- 2168. — Rational basis for different rates.
- 2169. — Flat rates and meter rates.
- 2170. — Effect of contracts.
- 2171. — Municipal residents and nonresidents.
- 2172. — Different rates for or as between commercial users.
- 2173. — Different rates for prior and new users.

**405. WATER LAW****XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 2174. — Different regions within service area.
- 2175. — Different types, character, or conditions of service.
- 2176. — Supply to multiple-unit structures or complexes.
- 2177. Supply free of charge to some customers in general.
- 2178. Exemptions.
- 2179. — In general.
- 2180. — Supply to public bodies or facilities.
- 2181. — Charitable, religious, or educational institutions or uses.
- 2182. Rate and amount in general.
- 2183. — In general.
- 2184. — Reasonableness in general.
- 2185. — Methodologies; establishment of rate base.
- 2186. — Rate of return.
- 2187. — Effect of usage or consumption on rate charged.
- 2188. Regulatory and ratemaking procedures.
- 2189. — In general.
- 2190. — Interim rates.
- 2191. — Jurisdiction.
- 2192. — Notice.
- 2193. — Hearing, in general.
- 2194. — Evidence.
- 2195. — Findings and adjudication.
- 2196. — Collateral challenge to ruling or order.
- 2197. Revision, increase, or reductions of charges.
- 2198. — In general.
- 2199. — Grounds for adjustment.
- 2200. — Methodologies used to calculate adjustment.
- 2201. — Proceedings.
  - (1). In general.
  - (2). Hearing.
  - (3). Evidence and witnesses.
  - (4). Findings and determination.
- 2202. Contract depriving municipality of right to establish rates.
- 2203. Water meters.
- 2204. — In general.
- 2205. — Right to install.
- 2206. — Duty to install.

**XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 2207. — Cost of meter and charges for installation.
- 2208. — Inspection, testing, maintenance, and repairs.
- 2209. — Meter reading and billing schedules.
- 2210. Hydrant rentals and charges for service.
- 2211. Judicial intervention or review of administrative determinations.
- 2212. — In general.
- 2213. — Exhaustion of administrative remedies.
- 2214. — Jurisdiction.
- 2215. — Venue.
- 2216. — Right of review.
- 2217. — Decisions and acts reviewable.
- 2218. — Temporary injunctive relief.
- 2219. — Time to seek review.
- 2220. — Preservation of questions in administrative proceedings.
- 2221. — Scope of review in general.
- 2222. — Review of discretion.
- 2223. — Fact questions.
- 2224. — Arbitrary, unreasonable, or capricious action.
- 2225. — Harmless or prejudicial error.
- 2226. — Determination and disposition.
- 2227. — Actions.
- 2228. — Injunction.
- 2229. Refusal to supply or turning off water for nonpayment of charges.
- 2230. — In general.
- 2231. — Restraining or enjoining discontinuance of supply.
- 2232. — Actions for wrongful discontinuance.
- 2233. Lien and enforcement.
- 2234. Payment, collection, and recovery back.
- 2235. — In general.
- 2236. — Refund of overcharges in general.
- 2237. — Payments made under duress or mistake of fact or law.
- 2238. — Time for application or proceedings; limitations.

**15. INJURIES INCIDENT TO SUPPLY OR USE.**

- 2245. In general.
- 2246. Notice of defects; duty to inspect.
- 2247. Insufficiency of supply.

**405. WATER LAW****XII. PUBLIC WATER SUPPLY.(Cont'd)**

- 2248. Impurity of water.
- 2249. Overflow or leakage.
- 2250. — In general.
- 2251. — Notice of defect.
- 2252. — Duty to test, inspect, and replace.
- 2253. Location and condition of meters, boxes, manholes, and other appliances or works.
- 2254. Miscellaneous defects or failures.
- 2255. Actions.
- 2256. — In general.
- 2257. — Time to sue, and laches.
- 2258. — Pleading and parties.
- 2259. — Evidence.
- 2260. — Questions for jury.
- 2261. — Findings, verdict, and judgment.
- 2262. — Damages and other relief.

**16. INJURIES TO WORKS, MAINS, PIPES, OR APPLIANCES.**

- 2265. In general.
- 2266. Actions.
- 2267. Damages.

**17. PENALTIES AND OFFENSES.**

- 2270. In general.
- 2271. Penalties for violations of regulations.
- 2272. Offenses incident to supply or use of water.

**(C) MINING, MECHANICAL, AND MANUFACTURING PURPOSES.**

- 2275. In general.
- 2276. Nature and extent of right to water.
- 2277. Water or water-power companies.
- 2278. Acquisition of water rights, and rights incident thereto.
- 2279. Right of way and other interests in land.
- 2280. Actions to establish and protect water rights and other rights of property.
- 2281. Supply to consumers.
- 2282. Sale or lease of water.
- 2283. Tolls and other charges for water.
- 2284. Injuries incident to supply and use.

**XIII. RECLAMATION, IRRIGATION, AND OTHER AGRICULTURAL USE.****(A) IN GENERAL.**

- 2290. In general.
- 2291. Nature and extent of right to water in general.
- 2292. Constitutional and statutory provisions.
- 2293. Supervision by public authorities in general.

**(B) RECLAMATION OF ARID LAND BY PUBLIC AUTHORITIES.****1. IN GENERAL.**

- 2295. In general.
- 2296. Power to establish reclamation projects.
- 2297. Purposes.

**2. RECLAMATION BY STATES.**

- 2300. In general.
- 2301. Constitutional and statutory provisions.
- 2302. Carey Act projects in general.
- 2303. Segregation of federal lands for settlement.
- 2304. — In general.
- 2305. — Acreage limitations.
- 2306. — Necessity of actual settlement.
- 2307. — Entry fee and payment for lands.
- 2308. — Beneficial use of water; cultivation and irrigation of lands.
- 2309. — Time limits.
- 2310. — Donation or grant of patent to settlers or entrymen.
- 2311. Rights of way for canals or ditches.
- 2311.5. — In general.
- 2312. — Establishment of projects, in general.
- 2313. — Statutory and regulatory authorization.
- 2314. Public notice of project.
- 2315. Determination of lands included in reclamation district, and review.
- 2316. Per-acre charges for water.
- 2317. — In general.
- 2318. — Time for estimation and apportionment.
- 2319. — Waiver of preconstruction determination.
- 2320. — Limitation to actual costs.
- 2321. Administrative approval of project plan.

**405. WATER LAW****XIII. RECLAMATION, IRRIGATION,  
AND OTHER AGRICULTURAL  
USE.(Cont'd)**

- 2322. Construction contracts.
- 2323. — In general.
- 2324. — Authority to contract.
- 2325. — Performance bonds.
- 2326. — Development or construction companies.
- 2327. — Status as public or private entity.
- 2328. — Financing and construction or facilities; sale of bonds.
- 2329. — Title and rights in irrigation system and waters.
- 2330. — Contracts with settlers for water supply; deferred payments.
- 2331. — Right to issuance of water stock or shares.
- 2332. — Limitations on water contracts or amount of stock issued.
- 2333. — Liens for construction costs.

**3. RECLAMATION BY UNITED STATES.**

- 2335. In general.
- 2336. Constitutional and statutory provisions.
- 2337. Purpose and construction.
- 2338. Administrative interpretation.
- 2339. Power and authority to establish projects.
- 2340. Federal administration of program; reclamation bureau.
- 2341. Appropriation, purchase, or condemnation of water rights.
- 2342. Effect of state law.
- 2343. Title to project water rights.
- 2344. Water user acreage limitations.
- 2345. Excess lands and charges therefor.
- 2346. Residency requirement.
- 2347. Repayment of construction costs; assessments.
- 2348. Subsidy amendments.
- 2349. Contracts for construction of works.
- 2350. Federal operation and management of projects, in general.
- 2351. Uses of project water, in general.
- 2352. Distribution of project waters.
- 2353. Contracts between federal government and local districts or associations.
- 2354. Delegation of distribution functions to local districts.

**(C) IRRIGATION AND OTHER AGRICULTURAL  
PURPOSES.****1. IN GENERAL.**

- 2355. In general.
- 2356. Nature and extent of right to water in general.
- 2357. Constitutional and statutory provisions.
- 2358. Supervision by public authorities in general.

**2. IRRIGATION DISTRICTS.**

- 2360. In general.
- 2361. Nature, creation, and incidents in general.
- 2362. Proceedings for organization.
- 2363. — In general.
- 2364. — Petitioner's bond.
- 2365. — Judicial confirmation or review.
- 2366. Territorial extent, and annexation or inclusion of land.
- 2367. — In general.
- 2368. — Petition for exclusion from district.
- 2369. — Consolidation of districts.
- 2370. District officers.
- 2371. District employees.
- 2372. Duties and liabilities.
- 2373. — In general.
- 2374. — Immunity or limited liability.
- 2375. Powers and proceedings in general.
- 2376. Contracts.
- 2377. Property acquisition and disposition.
- 2378. Torts.
- 2379. Bonds and other securities.
- 2380. — In general.
- 2381. — Preliminary proceedings.
- 2382. — Voting on bond issue.
- 2383. — Form, requisites, and validity.
- 2384. — Cancellation for invalidity.
- 2385. — Issuance, disposition, and proceeds.
- 2386. — Negotiability.
- 2387. — Payment and collection.
- 2388. — Mortgages.
- 2389. — Actions.
- 2390. Assessments, taxes, and lien and enforcement thereof.
- 2391. — In general.
- 2392. — Property liable.

**405. WATER LAW****XIII. RECLAMATION, IRRIGATION,  
AND OTHER AGRICULTURAL  
USE.(Cont'd)**

- 2393. — Benefit to property.
- 2394. — Exemptions.
- 2395. — Levy and assessment.
- 2396. — Objections and protests.
- 2397. — Payment, and recovery of assessments or taxes paid.
- 2398. — Collection and enforcement.
- 2399. — Remedies for wrongful enforcement.
- 2400. Control and disbursement of funds.
- 2401. Dissolution.

**3. IRRIGATION OR DITCH COMPANIES  
AND ASSOCIATIONS.**

- 2405. In general.
- 2406. Irrigation or ditch companies.
- 2407. — In general.
- 2408. — Capital, stock, and stockholders.
- 2409. Mutual ditch companies or associations and joint-stock companies, for irrigation of lands of members.
- 2410. Private irrigation corporation.

**4. ACQUISITION OF WATER RIGHTS, AND  
RIGHTS INCIDENT THERETO.**

- 2415. In general.
- 2416. Rights of way and other interests in land.

**5. STORAGE, RESERVOIRS, DITCHES,  
AND CONDUITS.**

- 2420. In general.
- 2421. Storage of water, and reservoirs therefor.
- 2422. Irrigation ditches, canals, and other conduits.
- 2423. — In general.
- 2424. — Statutory provisions.
- 2425. — Authority to establish and control in general.
- 2426. — Agreements or contracts.
- 2427. — Water rights and ditch rights, distinguished.
- 2428. — Easements in general.
- 2429. — Easement appurtenant or in gross.
- 2430. — Construction.

**XIII. RECLAMATION, IRRIGATION,  
AND OTHER AGRICULTURAL  
USE.(Cont'd)**

- 2431. — Right and duty to enter lands to conduct maintenance and effect repairs.
- 2432. — Abandonment, forfeiture, or other termination.
- 2433. — Enlargement or alteration of use.
- 2434. — Location.
- 2435. — Bridges or other structures over ditches and conduits.
- 2436. Injuries from construction of works.
- 2437. — In general.
- 2438. — Nuisance.
- 2439. Transfer of rights in ditches, canals, and other conduits.

**6. ACTIONS TO ESTABLISH AND PROTECT WATER  
RIGHTS AND OTHER RIGHTS OF PROPERTY.**

- 2440. In general.
- 2441. Injunction.
- 2442. Damages.

**7. RIGHT TO SUPPLY OF WATER  
AND DUTY TO DISTRIBUTE.**

- 2445. In general.
- 2446. Nature of right.
- 2447. Conditions.
- 2448. Quantity.
- 2449. Priority.
- 2450. Discrimination.
- 2451. Lands within irrigation district.
- 2452. Stockholders or members of company or association.
- 2453. Necessity of application to beneficial use.
- 2454. Place of delivery.
- 2455. Abandonment or termination of right or duty.
- 2456. Transfer of right or duty.
- 2457. — In general.
- 2458. — Effect of transfer of land or stock.

**8. SALE OF WATER AND SUPPLY  
AND USE FOR IRRIGATION.**

- 2460. In general.
- 2461. Contracts.
- 2462. — In general.
- 2463. — Validity.
- 2464. — Construction and operation.

**405. WATER LAW****XIII. RECLAMATION, IRRIGATION,  
AND OTHER AGRICULTURAL  
USE.(Cont'd)**

2465. — Performance or breach.  
2466. — Actions.

**9. REGULATION OF SUPPLY AND USE.**

2470. In general.  
2471. Rules and regulations in general.  
2472. Regulation by public authority.  
2473. Contracts.

**10. TOLLS AND OTHER CHARGES FOR WATER.**

2475. In general.  
2476. Reasonableness of charges; regulation.  
2477. Discrimination.  
2478. Payment and collection.  
2479. Objections and protests.  
2480. — In general.  
2481. — Proceedings and relief against unreasonable rates.  
2482. Lien for tolls and charges on land or crops.

**11. INJURIES INCIDENT TO SUPPLY OR USE.**

2485. In general.  
2486. Personal injuries.  
2487. Property damage in general.  
2488. Failure or insufficiency of supply.  
2489. Overflow, leakage, and runoff.  
2490. Nuisance.  
2491. Actions.

**12. INJURIES TO CANALS, DITCHES, OR  
OTHER WORKS OR APPLIANCES.**

2495. In general.  
2496. Injunction.  
2497. Actions.  
2498. Damages.

**13. PENALTIES AND OFFENSES INCIDENT  
TO SUPPLY OR USE OF WATER.**

2500. In general.  
2501. Penalties and forfeitures.  
2502. Offenses.

**XIV. ICE.**

2505. Nature of property.  
2506. Rights of riparian proprietors in general.

**XIV. ICE.(Cont'd)**

2507. Public nonnavigable waters.  
2508. Artificial ponds, reservoirs, and water-courses.  
2509. Conveyances, licenses, and contracts.  
2510. Injuries to ice.  
2511. Cutting and removing ice.

**XV. NAVIGABLE WATERS.****(A) IN GENERAL.**

2515. In general.  
2516. Navigability in general.  
2517. — In general.  
2518. — Statutory declaration as to navigability.  
2519. — Title and rights held in public trust.  
2520. — Test of navigability in general.  
2521. — Effect of federal law.  
2522. — Susceptibility of waters for use in commerce in general.  
2523. — Capacity for floatage.  
2524. — Waters navigable in natural condition, or through reasonable improvements.  
2525. — Sporadic or exceptional capability for navigation; temporary conditions.  
2526. — Effect of sandbars, falls, or other obstructions or impediments to navigation.  
2527. — Effect of disuse for navigation, or change in conditions.  
2528. — Ebb and flow of tide.  
2529. — Specific waters.  
2530. — Evidence as to navigability.  
2531. — Questions of fact.

**(B) RIGHTS OF PUBLIC.****1. IN GENERAL.**

2535. In general.  
2536. Power to control and regulate.  
2537. Constitutional and statutory provisions.  
2538. Ownership of waters.

**2. IMPROVEMENT OF CHANNELS AND STREAMS.**

2540. In general.  
2541. Power to make or authorize.  
2542. Permits.  
2543. Injuries from improvements.



**405. WATER LAW****XV. NAVIGABLE WATERS.(Cont'd)**

- 2544. Waterway districts.
- 2545. Navigation improvement companies.
- 2546. Lease of slack-water improvements.
- 2547. Construction and operation of improvements and works.
- 2548. — In general.
- 2549. — Contracts, performance, and breach.
- 2550. Assessments and taxes, and liability for cost of work.
- 2551. Tolls and other charges.
- 2552. Injuries to vessels from operation of locks.

**3. HARBORS, PORTS, AND TERMINALS.**

- 2555. In general.
- 2556. Statutes, ordinances, and regulations.
- 2557. Power and authority to establish, in general.
- 2558. Federal and local control; preemption.
- 2559. Port authorities, districts, commissions, and boards.
- 2560. — In general.
- 2561. — Officers and members; appointment and terms.
- 2562. — Powers and proceedings.
- 2563. — Duties and liabilities in general.
- 2564. — Tort claims; immunity.
- 2565. — Employees and employment issues.
- 2566. Licensing of deepwater port.
- 2567. Establishment of harbor line, and effect on riparian owners.
- 2568. Mode and plan of construction and improvements.
- 2569. — In general.
- 2570. — Contracts.
- 2571. Operation of harbor or port and facilities, in general.
- 2572. Leases and licenses to use harbor premises or facilities.
- 2573. Anchorage, mooring, berthing, and movement of vessels.
- 2574. Fees, tolls, duties, and taxes.
- 2575. Registration and licensing of stevedores and longshoremen.
- 2576. Deposits of refuse.
- 2577. Penalties.
- 2578. Offenses.

**4. NAVIGATION.**

- 2580. In general.
- 2581. Existence and nature of navigational servitude or easement.
- 2582. Navigable waters as public highways.
- 2583. Effect of statutes or regulations on navigational servitude.
- 2584. Extent, width, or boundaries of navigational servitude.
- 2585. Purposes and manner of exercising rights of navigation, in general.
- 2586. Floatage of rafts or logs.
- 2587. Regulation of location, types, and manner of navigation activities.
- 2588. Rights and duties as between users of waters and riparian owners, in general.
- 2589. Rights and duties as between respective users of waters.
- 2590. Use of lake, river, or sea bed, incident to exercise of navigation rights, in general.
- 2591. Right of anchorage.
- 2592. Use of shores or banks, incident to exercise of navigation rights, in general.
- 2593. Prescriptive acquisition of rights beyond boundary of navigational easement.
- 2594. Discrimination in permitting access or use; residency.
- 2595. Fees, taxes, tolls, or other exactions as condition to exercise of navigation rights.

**5. OBSTRUCTION OF NAVIGATION IN GENERAL, INJURY, AND REMEDIES.**

- 2600. In general.
- 2601. Bridges.
- 2602. — In general.
- 2603. — Authority to construct and maintain, or to authorize construction and maintenance.
- 2604. — Bridges as nuisances.
- 2605. — Obstruction of navigation.
- 2606. — Injuries from collision with bridge.
- 2607. — Requiring alteration or removal of bridges.
- 2608. — Construction and operation of draws in general.

**405. WATER LAW****XV. NAVIGABLE WATERS.(Cont'd)**

- 2609. — Injuries from construction or operation of draws.
- 2610. — Repair of bridges.
- 2611. Booms.
- 2612. — In general.
- 2613. — Authority to construct or to authorize construction.
- 2614. — Injuries from construction or maintenance.
- 2615. — Booms as nuisances.
- 2616. Piers, dams, and cables.
- 2617. — In general.
- 2618. — Authority to construct and maintain, or to authorize construction and maintenance.
- 2619. — Construction and maintenance.
- 2620. — Obstruction of navigation.
- 2621. — Injuries from construction or maintenance.
- 2622. — Dams and piers as nuisances.
- 2623. — Injuries to dams, piers, cables, and locks.
- 2624. Obstruction by vessels, rafts, or logs.
- 2625. Obstruction by wrecks.
- 2626. Obstruction by deposits in channels.
- 2627. Obstruction or diversion of or into waters of navigable streams or lakes.
- 2628. Remedies for obstructions.
- 2629. — In general.
- 2630. — Injunction.
- 2631. — Abatement or removal.
- 2632. — Actions for damages.
  - (1). In general.
  - (2). Time to sue; laches.
  - (3). Parties and pleading.
  - (4). Trial or hearing.
  - (5). Evidence.
  - (6). Findings and verdict.
  - (7). Damages.
  - (8). Judgment or order.
- 2633. Criminal prosecutions for causing or maintaining obstructions.

**6. PUBLIC USES OTHER THAN NAVIGATION.**

- 2635. In general.
- 2636. Bathing.
- 2637. Travel over ice.

**XV. NAVIGABLE WATERS.(Cont'd)**

- 2638. Cutting and removing ice.
- 2639. Use of shores or banks.

**7. SEWAGE AND POLLUTION.**

- 2640. In general.

**(C) LANDS UNDER WATER.****1. OWNERSHIP AND CONTROL IN GENERAL.**

- 2645. In general.
- 2646. Ownership by state.
- 2647. — In general.
- 2648. — Federal paramountcy.
- 2649. — Rights incident to state's admission to Union in general.
- 2650. — Equal footing doctrine.
- 2651. — Title and rights held in public trust.
- 2652. — Historic title.
- 2653. — Effect of accretion and reliction.
- 2654. — Seaward boundaries of coastal states.
- 2655. — State compacts.
- 2656. — Determination of ownership.
- 2657. Private ownership in general.
- 2658. Land between high and low water marks, tidelands, flats, and foreshore.
- 2659. — In general.
- 2660. — Public trust.
- 2661. — Ordinary high water line or mark in general.
- 2662. — Low water mark.
- 2663. — Mean high tide line.
- 2664. — Effect on extent of navigational servitude.
- 2665. — Determination of high and low water lines in general.
- 2666. — Evidence.
- 2667. — Questions of fact.
- 2668. Possession, occupancy, and use.
- 2669. Trespass to submerged lands, and actions therefor.
- 2670. Partition or division of submerged lands.
- 2671. — In general.
- 2672. — Determination of boundaries.
- 2673. Proceedings for recovery of submerged lands.

**405. WATER LAW****2. GRANTS TO AND ACQUISITION BY PRIVATE OWNERS OR MUNICIPALITIES.**

- 2675. In general.
- 2676. Power to grant.
- 2677. To whom grant may be made.
- 2678. Construction of grants.
- 2679. — In general.
- 2680. — Title and rights of grantees in general.
- 2681. — Riparian grant as ownership interest in land.
- 2682. Forfeiture of grant.
- 2683. Leases; water bottom leases.
- 2684. Exchanging tidelands.
- 2685. Grant as incident to grant of riparian lands.
- 2686. Grants to counties, cities, or towns.

**3. RECLAMATION AND IMPROVEMENT.**

- 2690. In general.
- 2691. Right to reclaim or improve submerged lands in general.
- 2692. Nature of improvement or activity.
- 2693. — In general.
- 2694. — Dredging and filling.
- 2695. Permits and application therefor.
- 2696. — In general.
- 2697. — Necessity of permit.
- 2698. — Time for application.
- 2699. — Determination.
- 2700. — Judicial review.
- 2701. Actions.
- 2702. Abatement and injunction.
- 2703. Offenses and penalties.

**XVI. DRAINAGE OF SWAMP OR LOWLANDS BY PUBLIC AUTHORITY.****(A) ESTABLISHMENT AND MAINTENANCE.**

- 2705. In general.
- 2706. Right to establish and maintain in general.
- 2707. Constitutional and statutory provisions.
- 2708. — In general.
- 2709. — Validity and constitutionality of statutory provisions.
- 2710. — Repeal and retroactive operation of statutes.
- 2711. — Construction and operation.
- 2712. Purposes for which drains may be established.

**XVI. DRAINAGE OF SWAMP OR LOWLANDS BY PUBLIC AUTHORITY.(Cont'd)**

- 2713. — In general.
- 2714. — Improvement of land.
- 2715. — Promotion of public health or welfare.
- 2716. Establishment by public authorities.
- 2717. — In general.
- 2718. — By state.
- 2719. — By counties or other local authorities.
- 2720. — Contribution to expenses.
- 2721. — Appropriation of money.
- 2722. Drainage and reclamation districts and commissions.
- 2723. — In general.
- 2724. — Nature, creation, and incidents in general.
- 2725. — Proceedings for organization.
  - (1). In general.
  - (2). Petition, parties, and notice.
  - (3). Hearing and determination, and review.
  - (4). — In general.
  - (5). — Surveys, plans, and specifications.
  - (6). — Objections.
  - (7). — Hearing.
  - (8). — Determination.
  - (9). — Review or appeal.
  - (10). — Certiorari.
- 2726. — Collateral attack.
- 2727. — Territorial extent, annexation or inclusion of land, consolidation, and detachment.
  - (1). In general.
  - (2). Maps, surveys, boundaries, and description.
  - (3). Power and authority to annex.
  - (4). Petition, parties, and notice.
  - (5). Grounds for annexation.
  - (6). Objections.
  - (7). Hearing.
  - (8). Review or appeal.
  - (9). Consolidation of territories.
  - (10). Detachment or severance of territory.
  - (11). Particular cases.
- 2728. — Dissolution or other termination.
- 2729. — Commissioners and other officers.

**405. WATER LAW****XVI. DRAINAGE OF SWAMP OR LOWLANDS  
BY PUBLIC AUTHORITY.(Cont'd)**

- 2730. — Powers and proceedings in general.
  - (1). In general.
  - (2). Meetings and elections.
  - (3). Funding and assessments.
  - (4). Powers and duties.
- 2731. — Rights and liabilities in general.
- 2732. — Actions.
- 2733. Drainage companies.
- 2734. Establishment by landowners over lands of others.
- 2735. Establishment by agreement of landowners.
- 2736. Proceedings for establishment.
- 2737. — In general.
- 2738. — Jurisdiction.
- 2739. — Parties.
- 2740. — Petition for drain.
- 2741. — Bond.
- 2742. — Notice.
- 2743. — Remonstrances or answers to petition.
- 2744. — Appointment, proceedings, and report of commissioners or viewers; reports of surveyors and engineers.
- 2745. — Remonstrances or objections to report of commissioners or viewers.
- 2746. — Hearing and determination of questions.
- 2747. — Decisions and record.
- 2748. — Appeal.
  - (1). In general.
  - (2). Nature and grounds of remedy, and appellate jurisdiction.
  - (3). Right of review and matters reviewable; standing.
  - (4). Requisites; time for proceedings; appeal bond.
  - (5). Review; presumptions; harmless error.
  - (6). Proceedings de novo and determination and disposition of cause.
  - (7). Subsequent appeals.
- 2749. — Review on certiorari.
- 2750. — Costs and expenses of proceedings.
- 2751. Actions to set aside proceeding.
- 2752. Collateral attack on proceedings.

**XVI. DRAINAGE OF SWAMP OR LOWLANDS  
BY PUBLIC AUTHORITY.(Cont'd)**

- 2753. Restraining construction; petitions to suspend or cancel a drainage project or facility.
- 2754. Location.
- 2755. Mode and plan of construction.
- 2756. — In general.
- 2757. — Improvement of watercourse.
- 2758. Right of way and other interests in land; easements.
- 2759. Construction.
- 2760. — In general.
- 2761. — Allotment of work among landowners.
- 2762. — Contracts.
  - (1). In general.
  - (2). Requisites and validity.
  - (3). Construction and operation.
  - (4). Modification and merger.
  - (5). Rescission, termination, and abandonment.
  - (6). Performance or breach.
  - (7). Actions.
- 2763. Improvement, extension, or alteration.
- 2764. — In general.
- 2765. — Petition, notice, and hearing.
- 2766. — Objections.
- 2767. — Funding and assessments.
- 2768. — Review or appeal.
- 2769. — Particular cases.
- 2770. Maintenance, cleaning, and repair.
- 2771. — In general; injunction.
- 2772. — Authority and duties.
- 2773. — Petition, notice, and hearing.
- 2774. — Funding and assessments.
- 2775. — Particular cases.
- 2776. — Allotment of work among landowners.
- 2777. — Contracts.
- 2778. Construction and maintenance of bridges and crossings.
- 2779. Damages or injuries from construction or maintenance.
- 2780. — In general.
- 2781. — Claims and assessment.
- 2782. — Flooding or flowing waters.
- 2783. — Appeal.
- 2784. — Particular cases.

**405. WATER LAW****XVI. DRAINAGE OF SWAMP OR LOWLANDS  
BY PUBLIC AUTHORITY.(Cont'd)**

- 2785. — Deduction or set-off of benefits.
- 2786. Liabilities of district or landowners for expenses or damages.
- 2787. — In general.
- 2788. — Apportionment.
- 2789. Use of drain.
- 2790. Injuries from defects or obstructions.
- 2791. Injuries to drains.
- 2792. Offenses incident to construction, maintenance, or use.
- 2793. Vacation or abandonment of drains.

**(B) ASSESSMENTS AND SPECIAL TAXES.**

- 2800. In general.
- 2801. Power to levy in general.
- 2802. Constitutional and statutory provisions.
- 2803. Purposes of levy or assessment.
- 2804. Amount of tax or assessment.
- 2805. Property liable.
- 2806. Benefit to property.
- 2807. Classification of property.
- 2808. Grounds of objection.
- 2809. Estoppel or waiver as to objections.
- 2810. Levy of tax.
- 2811. Proceedings for assessment; notice.
- 2812. — In general.
- 2813. — Time for proceedings.
- 2814. — Notice and hearing.
- 2815. — Surveys, plans, and specifications.
- 2816. Mode of assessment.
- 2817. — In general.
- 2818. — Apportionment of benefits and expenses.
- 2819. Certificate for work done against specific property.
- 2820. Proceeding to confirm or establish validity.
- 2821. Review, correction, or setting aside of assessment.
- 2822. — In general.
- 2823. — Conclusiveness of assessment and review thereof in general.
- 2824. — Collateral attack on assessment.
- 2825. — Appeal and error.
- 2826. — Certiorari to review assessment.
- 2827. — Proceedings to correct assessment or determine objections thereto.
- 2828. Reassessment or additional assessment.

**XVI. DRAINAGE OF SWAMP OR LOWLANDS  
BY PUBLIC AUTHORITY.(Cont'd)**

- 2829. Lien.
- 2830. Payment, and recovery of assessment paid.
- 2831. Penalties for nonpayment.
- 2832. Collection, enforcement, and sale or other disposition.
- 2833. — In general.
- 2834. — Collection procedures in general.
- 2835. — Enforcement in general.
- 2836. — Summary remedies.
- 2837. — Location of property.
- 2838. — Disposition of funds collected.
- 2839. — Actions.
  - (1). In general.
  - (2). Notice.
  - (3). Parties.
  - (4). Maps, plans, and surveys.
  - (5). Hearing or trial.
  - (6). Evidence.
  - (7). Findings and determination.
  - (8). Fees, costs, and interest.
  - (9). Appeal.
- 2840. Remedies for wrongful enforcement.

**XVII. LEVEES AND FLOOD CONTROL  
THROUGH PUBLIC WORKS.**

- 2850. In general.
- 2851. Power to establish and maintain in general.
- 2852. Constitutional and statutory provisions.
- 2853. — In general.
- 2854. — Purpose.
- 2855. — Validity.
- 2856. — Construction and operation.
- 2857. — Retroactivity and repeal.
- 2858. Establishment by state.
- 2859. Districts, boards, and officers; soil conservation district.
- 2860. — In general.
- 2861. — Nature, creation, and incidents in general.
- 2862. — Proceedings for organization.
- 2863. — Territorial extent of districts; annexation, detachment, and consolidation.
- 2864. — Appointment, qualification, and tenure of officers.

**405. WATER LAW****XVII. LEVEES AND FLOOD CONTROL  
THROUGH PUBLIC  
WORKS.(Cont'd)**

- 2865. — Powers and proceedings in general.
- (1). In general.
- (2). Meetings and elections.
- (3). Fiscal matters.
- (4). Powers and duties.
- 2866. — Rights and liabilities in general.
- 2867. — Actions.
- 2868. — Dissolution.
- 2869. Proceedings for establishment.
- 2870. Location.
- 2871. Acquisition of land or rights therein; easements and rights of way.
- 2872. Construction.
- 2873. — In general.
- 2874. — Contracts.
- (1). In general.
- (2). Requisites and validity.
- (3). Construction and operation.
- (4). Modification and merger.
- (5). Termination, rescission, and abandonment.
- (6). Performance or breach.
- (7). Actions.
- 2875. — Implied warranties.
- 2876. Improvement, extension, or alteration.
- 2877. Maintenance and repair.
- 2878. — In general.
- 2879. — Contracts.
- 2880. Damages from construction or maintenance.
- 2881. — In general.
- 2882. — Construction.
- 2883. — Maintenance.
- 2884. — Personal injuries.
- 2885. — Immunity.
- 2886. Liabilities for expenses and damages.
- 2887. Assessments and special taxes.
- 2888. — In general.
- 2889. — Property liable.
- 2890. — Exemptions.
- 2891. — Levy and assessment.
- (1). In general.
- (2). Benefits and assessments.
- (3). Notice.
- (4). Proceedings.

**XVII. LEVEES AND FLOOD CONTROL  
THROUGH PUBLIC  
WORKS.(Cont'd)**

- (5). Review or appeal.
- 2892. — Particular cases.
- 2893. — Payment, and recovery of assessments paid.
- 2894. — Collection and enforcement in general.
- 2895. — Liens.
- 2896. — Sale of land for nonpayment.
- (1). In general.
- (2). Proceedings to effect sale.
- (3). Redemption.
- (4). Confirmation.
- (5). Opening or vacating, and collateral attack.
- 2897. — Remedies for wrongful enforcement.
- 2898. — Disposition of proceeds.
- 2899. District or other levee funds, debts, and securities.
- 2900. — In general.
- 2901. — Indebtedness and expenditures in general.
- 2902. — Funds, and administration thereof in general.
- 2903. — Warrants, orders, and payments.
- 2904. — Bonds and other securities.
- 2905. Injuries to levees or works.
- 2906. Injuries from defects.
- 2907. — In general.
- 2908. — Breaches, flooding, and overflow.
- 2909. — Personal injuries.
- 2910. — Immunity.
- 2911. Offenses.

**XVIII. CANALS FOR NAVIGATIONAL USE.****(A) ESTABLISHMENT, CONSTRUCTION,  
AND MAINTENANCE.**

- 2920. In general.
- 2921. Right to establish and maintain in general.
- 2922. Character of canal as highway.
- 2923. Constitutional and statutory provisions.
- 2924. Establishment by state or United States.
- 2925. — In general.
- 2926. — State officers and agents.
- 2927. Canal companies.

**406. WEAPONS****XVIII. CANALS FOR NAVIGATIONAL  
USE.(Cont'd)**

- 2928. — In general.
- 2929. — Incorporation and organization.
- 2930. — Franchises, privileges, and powers.
- 2931. — Public aid.
- 2932. — Actions.
- 2933. Location.
- 2934. Right of way and other interests in land.
- 2935. — In general.
- 2936. — Purchase or other acquisition, and nature of title and estate acquired.
- 2937. — Description and uses of canal lands.
- 2938. Acquisition of water sources and rights incident thereto.
- 2939. Construction.
- 2940. — In general.
- 2941. — Contracts.
  - (1). In general.
  - (2). Requisites and validity.
  - (3). Contractors' bonds.
  - (4). Construction and operation.
  - (5). Modification and merger.
  - (6). Rescission, termination, and abandonment.
  - (7). Performance or breach.
  - (8). Actions.
- 2942. Maintenance and repair.
- 2943. Construction and maintenance of bridges, ferries, and tunnels.
- 2944. — In general.
- 2945. — Authority and duty to build.
- 2946. — Operation.
- 2947. — Maintenance.
- 2948. — Grant of right of way over canal lands to third parties.
- 2949. Injuries from construction or maintenance.
- 2950. — In general.
- 2951. — Injuries arising from canal operations in general.
- 2952. — Overflow, seepage, and flooding.
- 2953. — Personal injury.
- 2954. — Actions in general.
- 2955. — Damages.

**XVIII. CANALS FOR NAVIGATIONAL  
USE.(Cont'd)**

- 2956. Penalties for failure to construct or maintain canal or bridge.
- 2957. Sale, lease, and transfer of canal.
- 2958. Mortgages.
- 2959. Duration, abandonment or other termination, and reversion.
- 2960. Injuries to canals, works, or appliances.
- 2961. Offenses incident to construction and maintenance.

**(B) REGULATION AND OPERATION.**

- 2970. Power to control and regulate.
- 2971. Mode of operation.
- 2972. Tolls.
- 2973. Sale or lease of water.
- 2974. Injuries incident to navigation.
- 2975. — In general.
- 2976. — Hazards and obstructions to navigability.
- 2977. — Negligence.
- 2978. — Strict liability.
- 2979. Actions.
- 2980. — In general.
- 2981. — Damages.

**XIX. WEATHER MODIFICATION.**

- 2990. In general.
- 2991. Statutory provisions.

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**406. WEAPONS****SUBJECTS INCLUDED**

- Right to bear arms in self-defense or in defense of the state
- Regulation of manufacture, dealing in, and use of weapons
- Liabilities for injuries therefrom caused by negligence
- Offenses of having or carrying weapons concealed or in any other manner prohibited, pointing or shooting firearms, etc., not constituting any other distinct offense

**406. WEAPONS****SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Militia, matters relating to, see MILITIA

Premises liability cases involving injuries caused by shooting, where the alleged negligence is not directly related to the weapon itself, see NEGLIGENCE ¶1160 and related lines in that topic

Specific injuries or crimes committed by use of weapons, see ASSAULT AND BATTERY, HOMICIDE, ROBBERY, and other specific topics

Tort liability of manufacturers, distributors, and others for defects or dangers in weapons or parts thereof, see PRODUCTS LIABILITY

Use of a weapon as a sentencing factor, see SENTENCING AND PUNISHMENT

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- I. IN GENERAL, ¶101–119.
- II. LICENSING OF DEALERS, MANUFACTURERS, AND IMPORTERS, ¶120–129.
- III. REGISTRATION, LICENSES, OR PERMITS OF OWNERS AND PURCHASERS, ¶130–144.
- IV. OFFENSES, ¶145–219.
- (A) IN GENERAL, ¶145.
- (B) MANUFACTURE, SALE, OR TRANSFER, ¶146–159.
- (C) POSSESSION, USE, CARRYING, OR PERSONAL TRANSPORT, ¶160–219.
- V. PROSECUTION, ¶220–349.
- (A) IN GENERAL, ¶220.
- (B) INDICTMENT OR INFORMATION, ¶221–239.
- (C) PRESUMPTIONS AND BURDEN OF PROOF, ¶240–259.
- (D) ADMISSIBILITY OF EVIDENCE, ¶260–279.
- (E) WEIGHT AND SUFFICIENCY OF EVIDENCE, ¶280–299.
- (F) QUESTIONS FOR JURY, ¶300–319.
- (G) INSTRUCTIONS, ¶320–339.
- (H) SENTENCE AND PUNISHMENT, ¶340–349.
- VI. FORFEITURES AND PENALTIES, ¶350–359.
- VII. CIVIL LIABILITIES FOR NEGLIGENCE USE OR ENTRUSTMENT, ¶360–368.

**I. IN GENERAL.**

101. In general.
102. Constitutional, statutory, and regulatory provisions.
103. — In general.
104. — Power to regulate.
105. — Purpose.
106. — Validity.
- Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.*
- (1). In general.
- (3). Violation of right to bear arms.
- (4). Violation of other rights or provisions.
107. — Construction.
- (1). In general.
- (2). Right to bear arms in general.
- (3). Definitions.
- (4). What guns are allowed.
- (5). Right as individual or collective; militia requirement.
108. — Retroactive operation.
109. Weapons or objects affected; definitions.
110. — In general.
111. — Dangerous or deadly weapons in general.
112. — Firearms in general.
- (1). In general.
- (2). Pistols and handguns.
- (3). Rifles and shotguns.
- (4). Automatic or semi-automatic weapons.
- (5). Modified weapons.
- (6). Operability.
113. — Knives, swords; objects used to cut or stab.
114. — Clubs, bats; objects used to beat.
115. — Other miscellaneous objects.

**II. LICENSING OF DEALERS,  
MANUFACTURERS, AND  
IMPORTERS.**

120. In general.
121. Application.
122. Grounds for grant or denial of license.
123. Proceedings.
124. Duties and liabilities of licensee.
125. Record-keeping and background checks.



**406. WEAPONS****II. LICENSING OF DEALERS,  
MANUFACTURERS, AND  
IMPORTERS.(Cont'd)**

- 126. Revocation, non-renewal.
- 127. Judicial review.

**III. REGISTRATION, LICENSES, OR PERMITS  
OF OWNERS AND PURCHASERS.**

- 130. In general.
- 131. Application.
- 132. Registration of guns.
- 133. License to own or possess gun; owner identification cards.
- 134. Permits to carry guns.
- 135. Revocation, non-renewal.
- 136. Judicial review.

**IV. OFFENSES.****(A) IN GENERAL.**

- 145. In general.

**(B) MANUFACTURE, SALE, OR TRANSFER.**

- 146. In general.
- 147. Dealing without license.
- 148. Prohibited transfers.
- 149. Prohibited weapons/ammunition.
- 150. Records.
- 151. Transportation.
- 152. Interstate and foreign commerce.
- 153. False statements to dealers.
- 154. Chemical and biological weapons.
- 155. Attempts.
- 156. Defenses.
- 157. Parties to crime; aiding and abetting.

**(C) POSSESSION, USE, CARRYING,  
OR PERSONAL TRANSPORT.**

- 160. In general.
- 161. Interstate or foreign commerce.
- 162. Possession and carrying in general.
- 163. — In general.
- 164. — Possessory crimes in general.
- 165. — What constitutes carrying.
- 166. — What constitutes possession.
- 167. — Constructive possession.
- 168. — Concealment.
- 169. — Knowledge, intent.
- 170. Possession or carrying without a license.
- 171. Place.

**IV. OFFENSES.(Cont'd)**

- 172. Vehicles.
- 173. Possession after conviction of crime.
- 174. — In general.
- 175. — Elements of offense in general.
- 176. — Miscellaneous particular issues.
- 177. — Possession.
- 178. — Validity of prior conviction.
- 179. — Degree, scope, or nature of prior offense in general.
- 180. — Particular offenses.
  - (1). In general.
  - (2). Particular felonies.
  - (3). Domestic violence.
- 181. — Time considerations.
- 182. — Effect of subsequent circumstances.
- 183. Possession by chemically dependent or mentally disabled persons.
- 184. Other individuals prohibited from possession.
- 185. Manner of use.
- 186. — In general.
- 187. — Pointing, exhibiting, or brandishing.
- 188. — Shooting or discharging.
  - (1). In general.
  - (2). Intent.
  - (3). At or into vehicle.
  - (4). At or into dwelling.
- 189. Use or possession during and in relation to commission of crime.
- 190. — In general.
- 191. — Possession.
- 192. — Furtherance; nexus.
- 193. — Using, carrying, brandishing, or discharge.
- 194. — Crime at issue.
  - (1). In general.
  - (2). Crimes of violence.
  - (3). Controlled substances.
  - (4). Other particular crimes.
- 195. Chemical and biological weapons.
- 196. Degrees.
- 197. Attempts.
- 198. Defenses in general; justification or excuse.
- 199. — In general.

**406. WEAPONS****IV. OFFENSES.(Cont'd)**

- 200. — Innocent possession; intent, knowledge.
- 201. — Transitory possession.
- 202. — Self-protection or necessity.
- 203. — Persons or places exempted.
  - (1). In general.
  - (2). Private property.
  - (3). Law enforcement officers and security guards.
- 204. Parties to crime; aiding and abetting.

**V. PROSECUTION.****(A) IN GENERAL.**

- 220. In general.

**(B) INDICTMENT OR INFORMATION.**

- 221. In general.
- 222. Requisites and sufficiency in general.
- 223. Description of weapon.
- 224. Manufacture, sale, transfer.
- 225. Possession, use, carrying.
- 226. — In general.
- 227. — Manner of use.
- 228. — Possession after conviction of crime.
- 229. — Transportation; interstate commerce.
- 230. — Use or possession in commission of crime.
- 231. — Intent, knowledge, purpose.
- 232. Issues, proof, and variance.

**(C) PRESUMPTIONS AND BURDEN OF PROOF.**

- 240. In general.
- 241. Weapons prohibited.
- 242. Manufacture, sale, transfer.
- 243. Possession, use, carrying.
- 244. — In general.
- 245. — Constructive possession.
- 246. — Manner of use.
- 247. — Possession after conviction of crime.
- 248. — Use or possession in commission of crime.
- 249. — Intent, knowledge, purpose.
- 250. — Defenses.

**(D) ADMISSIBILITY OF EVIDENCE.**

- 260. In general.
- 261. Weapons prohibited.
- 262. Manufacture, sale, transfer.
- 263. Possession, use, carrying.
- 264. — In general.
- 265. — Constructive possession.
- 266. — Possession after conviction of crime; prior convictions.
- 267. — Use or possession in commission of crime.
- 268. — Intent, knowledge, purpose.
- 269. — Defenses.

**(E) WEIGHT AND SUFFICIENCY OF EVIDENCE.**

- 280. In general.
- 281. Weapons prohibited.
- 282. Manufacture, sale, transfer.
- 283. — In general.
- 284. — Dealing without a license.
- 285. — Prohibited sales and weapons.
- 286. — Interstate or foreign commerce.
- 287. — False statements to dealers.
- 288. — Defenses.
- 289. Possession, use, carrying.
- 290. — In general.
- 291. — Possession or carrying.
  - (1). In general.
  - (2). Constructive possession in general.
  - (3). Possessory crimes in general.
  - (4). Place; vehicles.
  - (5). Possession or carrying without license.
  - (6). Possession under a disability other than prior conviction.
  - (7). Concealment; carrying concealed weapons.
- 292. — Manner of carrying or use.
- 293. — Possession after conviction of crime.
  - (1). In general.
  - (2). Interstate connection.
  - (3). Possession.
  - (4). Existence or eligibility of prior conviction.
- 294. — Use or possession in commission of crime.
  - (1). In general.
  - (2). Interstate connection.

**407. WEIGHTS AND MEASURES****V. PROSECUTION.(Cont'd)**

- (3). Possession.
- (4). Underlying crime.
- (5). Use and manner of use.
- (6). Furtherance; nexus.
- 295. — Defenses and exemptions.
- 296. — Parties to crime; aiding and abetting.
- 297. — Attempts.

**(F) QUESTIONS FOR JURY.**

- 300. In general.
- 301. Weapons prohibited.
- 302. Manufacture, sale, gift, loan, receipt, transfer.
- 303. Possession, use, carrying.
- 304. — In general.
- 305. — Constructive possession.
- 306. — Manner of use or carrying.
- 307. — Possession after conviction of crime.
- 308. — Use or possession in commission of crime.
- 309. — Intent, knowledge, purpose.
- 310. — Defenses.

**(G) INSTRUCTIONS.**

- 320. In general.
- 321. Weapons prohibited.
- 322. Manufacture, sale, transfer.
- 323. Possession, use, carrying.
- 324. — In general.
- 325. — What is possession; constructive possession.
- 326. — Manner of carrying or use.
- 327. — Possession after conviction of crime.
- 328. — Use or possession in commission of crime.
- 329. — Intent, knowledge, purpose.
- 330. — Defenses and exemptions.

**(H) SENTENCE AND PUNISHMENT.**

- 340. In general.
- 341. Manufacture, sale, transfer.
- 342. Possession, use, carrying, or transportation.
- 343. Possession after conviction of crime.

**V. PROSECUTION.(Cont'd)**

- 344. Use or possession in commission of a crime.

**VI. FORFEITURES AND PENALTIES.**

- 350. In general.
- 351. Forfeiture or return of weapon.
- 352. Proceedings.

**VII. CIVIL LIABILITIES FOR NEGLIGENT USE OR ENTRUSTMENT.**

- 360. In general.
- 361. Negligent handling or use.
- 362. Negligent storage; failure to prevent theft.
- 363. Negligent entrustment.
- 364. Actions.
- 365. — In general.
- 366. — Evidence.
- 367. — Questions of law or fact.
- 368. — Instructions.

**407. WEIGHTS AND MEASURES****SUBJECTS INCLUDED**

Standards of quantity established by public authority  
Enforcement of application of such standards to sales and other transactions in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Miners, weighing requirements for protection of, see LABOR AND EMPLOYMENT

- 1. Power to regulate.
- 2. Constitutional and statutory provisions.
- 3. Systems and standards in general.
- 5. Regulations of sales of particular articles.
- 6. Conformity to standards and regulations in general.
- 7. Inspection and sealing.
- 8. Public weighers, measurers, or surveyors.
- 9. Use of unauthorized weights or measures.
- 10. Use of false weights or measures.

**407. WEIGHTS AND MEASURES**

11. Penalties, and forfeitures, and actions therefor.
12. Criminal prosecutions.

**408. WHARVES****SUBJECTS INCLUDED**

Construction, maintenance, regulation and use of wharves, landings, piers, and docks for the landing of vessels, whether constructed under franchises granted therefor or directly by the government, and whether use be subject to payment of wharfage or other fees or free

Organization, franchises, and powers of wharf or dock companies

Rights, duties and liabilities of such companies or of municipalities in respect of the management and use of their wharves, piers, or docks

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Corporations in general, matters applicable to, see CORPORATIONS AND BUSINESS ORGANIZATIONS

Eminent domain, exercise of power of, see EMINENT DOMAIN

Municipalities, establishment, operation, and regulation or grant of franchise, see MUNICIPAL CORPORATIONS

Riparian or littoral proprietors, rights and liabilities, see WATER LAW

Warehousemen, liabilities of wharfingers as, see WAREHOUSEMEN

1. Right to establish and maintain.
3. Statutory regulations.
4. What constitutes a wharf, dock, or pier.
5. Establishment by public authorities.
7. Grants, franchises, and privileges.
8. Construction, maintenance, and repair.
9. Sale, lease, and transfer.
10. Mode and purpose of use.
12. Supervision by public officers.
13. Management and conduct of business.
15. Wharfage.

16. — In general.
17. — Amount.
18. — Lien.
19. — Actions.
20. Injuries to vessels or cargoes.
  - (.5). In general.
  - (1). Duties and liabilities of wharfingers in general.
  - (2). Concealed defects, obstructions, or dangers.
  - (3). Condition of and defects or obstructions in channels, approaches and entrances to wharf, and in waters and beds alongside.
  - (4). Moorings and fastenings.
  - (5). Contributory negligence.
  - (6). Persons liable.
  - (7). Actions.
21. Personal injuries.
22. Injuries to wharves.
23. Penalties for violations of regulations.

**409. WILLS****SUBJECTS INCLUDED**

Instruments in writing making dispositions of property to take effect at death

Nature, requisites, validity, incidents, construction, operation and effect of such instruments

Evidence relating thereto

Probate, establishment, and contest thereof

Estates or interests created, and conditions or restrictions imposed thereon

Rights and liabilities of devisees and legatees

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Executors and administrators with will annexed, etc., designation, appointment, rights, powers, duties, and liabilities, see EXECUTORS AND ADMINISTRATORS

Gifts in expectation of death, see GIFTS

## 409. WILLS

Intestacy, effect of, see DESCENT AND DISTRIBUTION

Perpetuities or trusts for accumulations, restrictions on creation of, see PERPETUITIES

Taxes affecting legacy, succession or estate, see TAXATION, INTERNAL REVENUE

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  - II. TESTAMENTARY CAPACITY, ¶21–55.
  - III. CONTRACTS TO DEVISE OR BEQUEATH, ¶56–68.
  - IV. REQUISITES AND VALIDITY, ¶69–202.
    - (A) NATURE AND ESSENTIALS OF TESTAMENTARY DISPOSITIONS, ¶69–93.
    - (B) FORM AND CONTENTS OF INSTRUMENTS, ¶94–107.
    - (C) EXECUTION, ¶108–129.
    - (D) HOLOGRAPHIC WILLS, ¶130–135.
    - (E) NUNCUPATIVE WILLS, ¶136–150.
    - (F) ASSENT OF TESTATOR, ¶151–166.
    - (G) REVOCATION, ¶167–195.
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  - V. PROBATE OR CONTEST OF WILL, ¶203–434.
    - (A) PROBATE IN GENERAL, ¶203–221.
    - (B) ACTIONS TO ESTABLISH OR DETERMINE VALIDITY IN GENERAL, ¶222–230.
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    - (E) JURISDICTION, ¶247–257.
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- (O) VOID, LAPSED, AND FORFEITED DEVISES AND BEQUESTS, AND PROPERTY AND INTERESTS UNDISPOSED OF, ¶849–866.
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**I. NATURE AND EXTENT OF TESTAMENTARY POWER.**

1. Nature of power.
2. What law governs.
3. Constitutional and statutory provisions.
4. Property and rights subject to testamentary disposition.
5. — In general.
6. — Ownership and possession.
  - (1). In general.
  - (2). Life insurance policies and proceeds.
  - (3). Property owned in joint tenancy or tenancy by entirety.
  - (4). Partnership interests.
  - (5). Community property.
7. — Future and contingent estates or interests.
8. — After-acquired property.
9. Objects of testamentary disposition in general.
10. Capacity to take by devise or bequest.
11. Restrictions on disposition by testator leaving children, parents, husband, or wife.
12. Restrictions on devises and bequests for charitable or religious purposes.
13. — In general.
  - (1). In general.
  - (2). Devises and bequests within statute.
  - (3). Persons entitled to question validity of devise or bequest.
  - (4). Waiver or confirmation by heirs.
14. — Corporations and persons to whom applicable.
15. — Amount or portion of estate.
16. — Time of execution of will.
17. Restrictions on gifts between persons living in adultery or cohabitation, or to children born out-of-wedlock.

**I. NATURE AND EXTENT OF TESTAMENTARY POWER.(Cont'd)**

18. Illegality of object or purpose.
19. Mode and form of disposition.
20. Tenure, estate, or interest which may be created.

**II. TESTAMENTARY CAPACITY.**

21. Nature and measure in general.
22. What law governs.
23. Statutory provisions.
24. Personal disabilities in general.
25. Indians.
26. Infants.
27. Married women.
28. — In general.
29. — Separate property.
30. — Rights of husband.
31. Degree of mental capacity.
32. Degree of memory.
33. Insane persons.
34. — In general.
35. — Effect of adjudications as to mental incapacity and guardianship.
36. — Mental unsoundness in general.
37. — Lucid intervals.
38. — Insane delusions or monomania.
  - (1). In general.
  - (2). Influence on testamentary disposition.
  - (3). Delusions respecting members of family or heirs at law.
40. Peculiar belief or opinion.
41. Eccentricity.
42. Delirium of disease or other temporary mental incapacity.
43. Use and effect of drugs.
44. Intoxication and delirium tremens.
45. Illness or debility.
46. Persons in extremis.
47. Old age in general.
- 47.5. Alzheimer's disease, senile dementia, or mental decay.
48. Persons deaf, mute, or blind.
49. Illiterate persons.
50. Sufficiency of testator's understanding as to his property, persons to whom it may be given, and mode of disposition.
51. Evidence.

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## II. TESTAMENTARY CAPACITY.(Cont'd)

- 51.1. — In general.
- 52. — Presumptions and burden of proof.
  - (1). In general.
  - (2). Unequal, unjust, or unnatural disposition.
  - (3). Prior or habitual mental incapacity and lucid intervals.
  - (4). Adjudication as to mental incapacity and guardianship.
  - (5). Delusions and monomania.
  - (6). Physical condition and mental incapacity arising therefrom.
  - (7). Alzheimer's disease, senile dementia, or mental decay.
- 53. — Admissibility in general.
  - Expert opinion evidence, see EVIDENCE XII.*
  - (1). In general.
  - (2). Mental condition prior or subsequent to execution of will.
  - (3). Adjudication as to mental incapacity and guardianship.
  - (4). Hereditary insanity.
  - (5). Insane delusions, monomania, and peculiar belief or opinion.
  - (6). Physical conditions and mental incapacity arising therefrom.
  - (7). Habits and reputation.
  - (8). Transaction of business.
  - (9). Unequal, unjust, or unnatural disposition.
- 54. — Conduct and declarations of testator.
  - (1). In general.
  - (2). Conduct of testator toward friends and relatives.
  - (3). Declarations and inclinations of testator respecting disposition of property.
  - (4). Declarations of testator as to capacity.
  - (5). Execution of other wills.
- 55. — Weight and sufficiency.
  - (1). In general.
  - (2). Prior or habitual mental incapacity and lucid intervals.
  - (3). Insane delusions and monomania.
  - (4). Peculiar belief or opinion and eccentricity.

## II. TESTAMENTARY CAPACITY.(Cont'd)

- (5). Physical condition and mental incapacity arising therefrom in general.
- (6). Intoxication, habitual drunkenness, and use of drugs.
- (7). Old age and accompanying physical and mental weakness in general.
- (7.1). Alzheimer's disease, senile dementia, or mental decay.
- (8). Suicide by testator.
- (9). Understanding as to property.
- (10). Mode of disposition of property and conduct as to relatives.
- (11). Transaction of business and management of property.
- (12). Adjudication as to mental incapacity and guardianship.
- (13). Testimony of attesting witnesses.

## III. CONTRACTS TO DEVISE OR BEQUEATH.

- 56. Nature of obligation.
- 57. What law governs.
- 58.5. Making, requisites, and validity in general.
  - (1). In general.
  - (2). Oral contracts, necessity of writing, and statute of frauds.
  - (3). Consideration.
  - (4). Evidence of existence of contract in general.
  - (5). Presumptions and burden of proof.
  - (6). Admissibility.
  - (7). Degree of proof.
  - (8). Weight and sufficiency.
- 60. Antenuptial agreements.
- 61. Agreements as to mutual wills.
- 62. Joint or mutual wills as contracts.
- 63. Construction and operation.
- 64. Modification, rescission, or abandonment.
- 65. Conveyances to defeat rights under contract.
- 66. Performance or breach.
- 67. Rights and remedies on breach in general.
- 68. Actions for breach.

**409. WILLS****IV. REQUISITES AND VALIDITY.****(A) NATURE AND ESSENTIALS OF TESTAMENTARY DISPOSITIONS.**

- 69. Nature of will in general.
- 70. What law governs.
- 71. Statutory provisions.
- 72. Testamentary intent.
- 73. Disposition of property in general.
- 74. Partial disposition of estate.
- 75. Execution of powers.
- 76. Instrument making no disposition of property.
- 77. Time of taking effect.
- 78. Ambulatory character, and revocability.
- 80. Conditional or contingent will.
- 81. Validity and sufficiency of provisions of will in general.
- 82. Unjust or unnatural disposition.
- 83. Necessity for appointment of executor and provision for administration.
- 84. Instructions for and preparation of instrument.
- 85. Advice or suggestions of counsel, scrivener, notary, or others.
- 86. Will distinguished from other dispositions of property.
- 87. — In general.
- 88. — Deed or other conveyance or contract.
  - (.5). In general.
  - (1). Nature and form of instrument in general.
  - (2). Time of taking effect in general.
  - (3). Reservation of use and enjoyment.
  - (4). Delivery of instrument.
  - (5). Contract to devise or bequeath.
  - (6). Support or maintenance of grantor.
  - (7). Subsequent acts or conduct of parties.
  - (8). Lease.
- 89. — Note, bond, or order for payment of money.
- 90. — Gift.
- 91. — Trust or power.
- 92. Instrument operating as will and also as deed or contract.
- 93. Evidence as to character of transaction or instrument.

**(B) FORM AND CONTENTS OF INSTRUMENTS.**

- 94. Necessity and sufficiency of writing in general.
- 95. Necessity of instrument under seal.
- 96. Form of instrument in general.
- 97. Separate instruments.
- 98. Reference to other writings.
- 99. Codicils.
- 100. Joint and mutual wills.
- 101. Recitals.
- 102. Technical words of disposition.
- 103. Certainty.
- 104. — In general.
- 105. — Designation and description of devisees and legatees.
- 106. — Description of property.
- 107. Erasures and interlineations.

**(C) EXECUTION.**

- 108. Mode and requisites in general.
- 109. Knowledge of testator as to contents.
- 110. Date.
- 111. Signature or subscription by or for testator.
  - (.5). In general.
  - (1). Necessity and sufficiency in general.
  - (2). Location of signature on instrument.
  - (3). Signing by mark and writing of signature by other person.
  - (4). Assistance in making signature.
  - (5). Time of making signature.
- 112. Seal.
- 113. Attestation and subscription by witnesses.
  - 113.1. — In general.
- 114. — Necessity and nature in general.
- 115. — Number of witnesses.
- 116. — Competency of witnesses.
  - (1). In general.
  - (2). Notary.
  - (3). Interest of witness in general.
  - (4). Executors.
  - (5). Attorneys.
- 117. — Presence of testator and witnesses.
- 118. — Subscription or acknowledgment of testator in presence of witnesses.



**409. WILLS****IV. REQUISITES AND VALIDITY.(Cont'd)**

- 119. — Publication or declaration, and knowledge of witnesses as to nature or contents of instrument.
- 120. — Request to witnesses.
- 121. — Attestation clause.
- 122. — Noting erasures and interlineations.
- 123. — Subscription by witnesses.
  - (.5). In general.
  - (1). Mode and sufficiency in general.
  - (2). Attestation by mark and writing of signature by other person.
  - (3). Location of signatures on instrument.
  - (4). Time of attestation.
  - (5). Presence of testator and witnesses.
- 124. Making, sealing up, and superscription of mystic or sealed testament.
- 125. Codicils.
- 126. Deposit or filing for safe-keeping.
- 127. — In general.
- 128. — Custody during life of testator.
- 129. — Disposition on death of testator.

**(D) HOLOGRAPHIC WILLS.**

- 130. Nature and requisites in general.
- 131. Statutory provisions.
- 132. Handwriting of testator.
- 133. Execution.
- 134. Informal or defectively executed instrument as holograph.
- 135. Deposit, custody, and production.

**(E) NUNCUPATIVE WILLS.**

- 136. Nature and requisites in general.
- 137. Statutory provisions.
- 138. Property which may be disposed of.
- 139. Persons who may make.
- 140. Circumstances and occasion of making.
- 141. Making, validity, and sufficiency of disposition.
- 142. Attestation.
- 143. — In general.
- 144. — Number and competency of witnesses.
- 145. — Request to witnesses.
- 146. Reduction to writing.
- 147. Making, reading, and signing of nuncupative or open testament.

**IV. REQUISITES AND VALIDITY.(Cont'd)**

- 147.1. — In general.
  - 148. — Public act.
  - 149. — Private act.
  - 150. Informal or defectively executed instrument as nuncupative will.
- (F) ASSENT OF TESTATOR.**
- 151. Reality of assent of testator in general.
  - 152. Mistake.
  - 153. Fraud.
  - 154. Undue influence.
  - 155. — In general.
    - 155.1. — Nature and degree in general.
    - 155.2. — Advice or suggestion.
    - 155.3. — Importunity, persuasion and threats.
    - 155.4. — Arising from acts of kindness or attention.
    - 155.5. — Creation of resentment and false impressions in mind of testator.
  - 156. — Physical and mental condition of testator.
  - 157. — Personal, confidential, or fiduciary relations.
    - (1). In general.
    - (2). Family relationship in general.
    - (3). Attorneys.
    - (4). Care custodians or caregivers.
  - 158. — Exercise of influence.
    - 158.1. — Time of influence.
  - 159. — Effect on disposition of property.
  - 160. Operation and effect in general.
    - (.5). In general.
      - (1). Ratification or subsequent recognition of instrument by testator.
      - (2). Effect of waiver by person injured.
  - 161. Total or partial invalidity.
  - 162. Evidence.
    - 162.1. — In general.
  - 163. — Presumptions and burden of proof.
    - (1). In general.
    - (2). Personal, confidential, or fiduciary relations in general.
    - (3). Unlawful or improper relations.
    - (4). Devise or bequest to person drawing or assisting in execution of will.

**409. WILLS****IV. REQUISITES AND VALIDITY.(Cont'd)**

- (5). Devise or bequest to spouse or relative of person drawing or assisting in execution of will.
- (6). Unequal, unjust, or unnatural disposition.
- (7). Advice, persuasion, and acts of kindness.
- (8). Interest and opportunity of person benefited.
- 164. — Admissibility in general.
  - (.5). In general.
  - (1). Fraud and undue influence in general.
  - (2). Mistake.
  - (3). Unequal, unjust, or unnatural disposition.
  - (4). Relations between testator and persons benefited by or excluded from provisions of will.
  - (5). Motive, character, and conduct of persons benefited by will.
  - (6). Exertion of influence before or after execution of will.
  - (7). Physical and mental condition of testator.
- 165. — Declarations of testator.
  - (.5). In general.
  - (1). Admissibility in general.
  - (2). Time when made and res gestae.
  - (3). Corroborative facts and circumstances.
  - (4). Declarations respecting persons benefited by or excluded from will.
  - (5). Declarations as to inclinations or intentions respecting disposition of property.
- 166. — Weight and sufficiency.
  - (.5). In general.
  - (1). Fraud and undue influence in general.
  - (2). Personal, confidential, or fiduciary relations in general.
  - (3). Unlawful or improper relations.
  - (4). Direct or indirect benefit to person drawing or assisting in execution of will.
  - (5). Unequal, unjust, or unnatural disposition.

**IV. REQUISITES AND VALIDITY.(Cont'd)**

- (6). Consistency of disposition with inclinations and expressed intentions.
- (7). Motive and opportunity of person receiving benefit.
- (8). Physical and mental condition of testator.
- (9). Creation of resentment and false impressions in mind of testator.
- (10). Concealment or suppression of fact of execution of will.
- (11). Declarations of testator.
- (12). Circumstantial evidence.
- (G) REVOCATION.**
- 167. Revocation by act of testator in general.
- 168. Statutory provisions.
- 169. Capacity of testator.
- 170. Intent to revoke.
- 171. Destruction or mutilation.
- 172. Cancellation, obliteration, or alteration.
- 173. — In general.
- 174. — Partial revocation.
- 175. Destruction or alteration of duplicates or separate instruments.
- 176. Destruction, spoliation, or alteration by person other than testator.
- 177. Attempted or intended revocation prevented by fraud.
- 178. Subsequent will.
- 178.1. — In general.
- 179. — Making and effect in general.
- 180. — Loss of subsequent will.
- 181. — Express revocation.
- 182. — Inconsistent disposition.
- 183. — Partial revocation.
- 184. Codicil.
  - (.5). In general.
  - (1). Effect as revocation of provisions of will in general.
  - (2). Requisites and validity of codicil.
  - (3). Inconsistent dispositions or provisions.
  - (4). Particular provisions revoked.
- 185. Indorsement on will or codicil.
- 186. Revocation by writing not testamentary.
- 187. Oral revocation.
- 188. Revocation of joint or mutual will.
- 189. Conditional or dependent revocation.

**409. WILLS****IV. REQUISITES AND VALIDITY.(Cont'd)**

- 190. Revocation by operation of law in general.
- 191. Marriage and birth of issue.
- 192. Adoption of child.
- 193. Divorce.
- 194. Disposition of property or other alteration of estate.
- 195. Operation and effect of revocation.

**(H) REVIVAL.**

- 196. Revival of invalid or revoked will in general.
- 197. Republication of will in general.
- 198. Revival of revoked will by revocation of revoking instrument.
- 199. Revival or republication by codicil or other writing.
- 200. Oral revival or republication.
- 201. Revival of will revoked by operation of law.
- 202. Operation and effect of revival.

**V. PROBATE OR CONTEST OF WILL.****(A) PROBATE IN GENERAL.**

- 203. Nature and purpose of probate.
- 204. Statutory provisions.
- 205. Necessity for probate.
- 206. Instruments which may be admitted to probate.
- 207. Separate instruments.
- 208. Joint and mutual wills.
- 209. Nuncupative wills.
- 210. Fact of death of testator.
- 211. Duty to produce and offer will for probate.
- 212. Agreements of parties interested.
- 213. Probate in common form.
- 214. Probate in solemn form.
- 215. Determination in probate proceedings as to validity or construction of provisions of will.
- 216. Full or partial probate.
- 217. Successive applications for probate.
- 218. Abatement of proceedings.
- 219. Persons entitled to probate.
- 220. Persons who may oppose probate.
- 221. Revocation of probate.

**(B) ACTIONS TO ESTABLISH OR DETERMINE VALIDITY IN GENERAL.**

- 222. Nature and form of remedies in general.
- 223. Statutory provisions.
- 224. Right of action to reform will.
- 225. Right of action to contest or set aside will or probate.
- 226. Abatement and revival.
- 227. Persons who may sue to establish or defend will.
- 228. Persons who may attack or contest will or probate.
- 229. — In general.
- 230. — Estoppel, waiver, or agreement affecting right.

**(C) PROBATE OR ESTABLISHMENT OF LOST OR DESTROYED WILLS.**

- 231. Nature and form of remedies in general.
- 232. Statutory provisions.
- 233. Instruments which may be admitted to probate or established.
- 234. Loss, suppression, or destruction of instrument.
- 235. Right to probate.
- 236. Right of action to establish will.
- 237. Right of action to contest or set aside will or probate.

**(D) PROBATE OR RECORD OF FOREIGN WILLS.**

- 238. Nature and form of remedies in general.
- 239. Statutory provisions.
- 240. Instruments which may be admitted to probate or record.
- 241. Necessity of original probate in state of testator's domicile.
- 242. Nature and situs of property.
- 243. Right to probate.
- 245. Admission to record of will probated in other jurisdiction.
- 246. Right of action to contest or set aside will, probate, or record.

**(E) JURISDICTION.**

- 247. Jurisdiction of probate and proceedings relating thereto.
- 248. — In general.
- 249. — Domicile of testator.
- 250. — Existence and nature of property.
- 251. — Situs of property.
- 252. — Foreign wills.

**409. WILLS****V. PROBATE OR CONTEST OF WILL.(Cont'd)**

- 253. — Particular courts, judges, or other officers.
- 254. Jurisdiction of actions relating to wills or probate.
- 255. — In general.
- 256. — Court in which will was probated or recorded.
- 257. — Particular courts.

**(F) VENUE.**

- 258. In general.

**(G) TIME FOR PROBATE OR CONTEST.**

- 259. In general.
- 260. Limitations.  
*See also LIMITATION OF ACTIONS.*
- 261. Laches.

**(H) PARTIES.**

- 262. Parties to proceedings in probate court.
- 263. — In general.
- 264. — Intervention, addition, and substitution.
- 265. Parties to actions.
- 265.1. — In general.
- 266. — Plaintiffs.
- 267. — Defendants.
- 268. — Intervention, addition, and substitution.

**(I) NOTICE.**

- 269. Notice of application for probate or for revocation.

**(J) PROCESS.**

- 270. Citation or other process in probate court.

**(K) APPEARANCE.**

- 271. Appearance in probate court.

**(L) PETITIONS, OBJECTIONS, AND PLEADING.**

- 272. Petitions and proceedings thereon in probate courts in general.
- 273. Petition for probate.
- 274. — In general.
- 275. — Lost, suppressed, or destroyed will.
- 276. — Probate or record of foreign will.

**V. PROBATE OR CONTEST OF WILL.(Cont'd)**

- 277. Objections to probate, answers to petitions therefor, and caveats.
- 278. Petition for revocation of probate, and objections or answer thereto.
- 279. Pleading in actions to establish will.
- 280. Pleading in actions to contest or set aside will or probate.
- 280.1. — In general.
- 281. — Bill, complaint, or petition in general.
- 282. — Allegations as to grounds of contest or setting aside.
- 283. — Plea or answer.
- 284. — Demurrer, exceptions, and motions.
- 285. — Amended and supplemental pleadings.
- 286. — Issues, proof, and variance.

**(M) EVIDENCE.**

- 287. Presumptions and burden of proof.
- 288. — In general.
  - (1). In general.
  - (2). Nuncupative wills.
  - (3). Actions and proceedings to set aside or determine validity of probated will.
- 289. — Execution, existence, and genuineness.
- 290. — Revocation.
- 291. Admissibility.
- 292. — In general.
- 293. — Execution, existence, and genuineness.
  - (1). In general.
  - (2). Knowledge by testator as to contents.
  - (3). Motives, intentions, and natural obligations of testator.
  - (4). Lost or destroyed will.
  - (5). Character and conduct of persons interested in will.
  - (6). Parol and extrinsic evidence.
- 294. — Attesting witnesses.
- 295. — Handwriting of testator and of attesting witnesses.
- 296. — Revocation.
- 297. — Declarations of testator as to execution or revocation.

## 409. WILLS

## V. PROBATE OR CONTEST OF WILL.(Cont'd)

- (.5). In general.
- (1). Admissibility in general.
- (2). Motives, intentions, and natural obligations of testator.
- (3). Existence and contents of lost or destroyed will.
- (4). Revocation.
- 298. — Will or copy thereof and record of probate.
- 299. Weight and sufficiency.
- 300. — In general.
- 301. — Ex parte and uncontested proceedings.
- 302. — Execution, existence, and genuineness.
  - (1). In general.
  - (2). Genuineness of will and signatures thereto.
  - (3). Knowledge of testator as to contents of instrument.
  - (4). Erasures, interlineations, and other alterations.
  - (5). Recitals of formalities of execution.
  - (6). Holographic and nuncupative wills.
  - (7). Codicils.
  - (8). Lost or destroyed will.
  - (9). Foreign will.
- 303. — Testimony of attesting witnesses.
  - (1). In general.
  - (3). Execution, existence, and genuineness in general.
  - (4). Necessity of proof by all of the attesting witnesses.
  - (5). Defect of memory.
  - (6). Evidence other than that of attesting witnesses.
  - (7). Character, contradiction, and impeachment.
- 304. — Handwriting of testator and attesting witnesses.
- 305. — Declarations of testator.
- 306. — Revocation.

## (N) HEARING OR TRIAL.

- 307. Withdrawal or dismissal of proceedings before trial.
- 308. Scope of inquiry and powers of court.

## V. PROBATE OR CONTEST OF WILL.(Cont'd)

- 309. — In general.
- 310. — Contested proceedings in probate court.
- 311. — Actions relating to wills or probate.
- 312. Mode of hearing or trial in general.
- 313. Hearing of ex parte and uncontested applications.
- 314. Reference, commission to take testimony, and depositions.
- 315. Submission of issues to jury.
- 316. — In general.
  - 316.1. — Grounds for submission in general.
  - 316.2. — Testamentary capacity.
  - 316.3. — Undue influence.
- 317. — Issues proper for jury.
- 318. — Proceedings for award and framing of issues.
  - (1). In general.
  - (2). Operation and effect of submission.
  - (3). Form, sufficiency, and effect of verdict and findings.
- 319. Notice of hearing or trial and preliminary proceedings.
- 320. Conduct of hearing or trial in general.
- 321. Right to open and close.
- 322. Reception of evidence.
- 323. Arguments and conduct of counsel.
- 324. Questions for jury in general.
  - (1). In general.
  - (2). Testamentary capacity.
  - (3). Undue influence and fraud.
  - (4). Execution and revocation.
- 325. Demurrer to evidence.
- 326. Dismissal at trial.
- 327. Direction of verdict.
- 328. Instructions.
- 329. — In general.
  - (1). Form and sufficiency in general.
  - (3). Presumptions and burden of proof.
  - (4). Weight and sufficiency of evidence.
  - (5). Conformity to pleadings and issues.
- 330. — Testamentary capacity.
  - (1). In general.

**409. WILLS****V. PROBATE OR CONTEST OF WILL.(Cont'd)**

- (2). Insane delusions or monomania.
- (3). Unequal, unjust, or unnatural disposition.
- 331. — Execution and validity in general.
  - (1). In general.
  - (2). Revocation.
  - (3). Unequal, unjust, or unnatural disposition.
  - (4). Lost or destroyed will.
- 332. — Undue influence and fraud.
- 333. Verdict and findings by jury.
- 334. Decision and findings by court or referee.
- 335. Objections and exceptions.
- 336. Waiver and correction of irregularities and errors.
- 337. Rehearing or new trial.

**(O) JUDGMENT OR DECREE.**

- 338. Grounds and mode of rendition in probate court.
- 339. — In general.
- 340. — Consent or agreement of parties.
- 341. — Contest and trial of issues.
- 342. Form and requisites in probate court in general.
- 343. Admission to probate.
- 344. — In general.
- 345. — Lost, suppressed, or destroyed will.
- 346. — Incidental determination as to validity and construction of provisions of will.
- 347. Admission to record of will probated in other jurisdiction.
- 348. Refusal of probate.
- 349. Judgments in actions relating to wills or probate.
- 349.1. — In general.
- 350. — Rendition, form, and requisites in general.
- 351. — Establishment and validity of will.
- 352. — Setting aside probate.
- 353. Entry and record.
- 354. Certificate of probate.
- 355. Opening or vacating.

**(P) REVIEW.**

- 356. Nature and form of remedy.
- 357. Appellate jurisdiction.

**V. PROBATE OR CONTEST OF WILL.(Cont'd)**

- 358. Decisions of probate courts, judges, or other officers reviewable.
- 359. Right of review of decisions of probate and intermediate courts.
- 360. Presentation and reservation in probate court of grounds of review.
- 361. Parties on appeal from probate court.
- 362. Requisites and proceedings for transfer of cause from probate or intermediate court.
- 363. — In general.
- 364. — Time for taking proceedings.
- 365. — Petition or prayer, and allowance.
- 366. — Bonds or other securities.
- 367. — Citation or other process or notice.
- 368. Effect of transfer of cause from probate court or proceedings therefor.
- 369. Supersedeas or stay of proceedings of probate court.
- 370. Record or transcript of proceedings in probate court.
- 371. Assignment of errors or statement of grounds or reasons of appeal.
- 371.5. Dismissal, withdrawal, or abandonment.
- 372. Hearing on appeal from probate or intermediate court in general.
- 373. Trial of cause anew on appeal from probate court.
- 373.1. — In general.
- 374. — Cases and questions triable in appellate court.
- 375. — Proceedings for trial de novo in general.
- 376. — Scope of inquiry.
- 377. — Further pleadings or new pleadings.
- 378. — Evidence.
- 379. — Mode and conduct of trial.
- 380. — Questions for jury.
- 381. — Instructions.
- 382. — Verdict and findings.
- 382.5. — New trial.
- 383. Scope and mode of review of decisions of probate court.
- 384. — In general.
- 386. — Questions of fact.
- 387. Determination and disposition of cause on appeal from probate court.

**409. WILLS****V. PROBATE OR CONTEST OF WILL.(Cont'd)**

- 388. — In general.
- 389. — Judgment on trial de novo.
- 390. — Affirmance, modification, or reversal of judgment or decree of probate court.
- 391. — Directing new trial or other or further proceedings.
- 392. — Remand and proceedings in court.
- 393. Review of decisions in actions relating to wills or probate.
- 393.1. — In general.
- 394. — Decisions reviewable.
- 395. — Right of review.
- 396. — Presentation and reservation in lower court of grounds of review.
- 397. — Taking and perfecting appeal or other proceeding.
- 398. — Effect of appeal or other proceeding.
- 399. — Record.
- 400. — Scope and mode of review.
- 401. — Determination and disposition of cause.
- 401.5. Liabilities on bonds and other securities.

**(Q) FEES AND COSTS.**

- 402. Power to award costs in general.
- 403. Discretion of court.
- 404. Parties to whom costs may be awarded.
- 405. Persons, property, and funds liable for costs.
- 406. Security for costs.
- 407. Proceedings in forma pauperis.
- 408. Amount and items of costs.
- 409. Taxation of costs.
- 410. Costs on appeal or other proceedings for review.
- 411. Payment and remedies for collection of costs.
- 412. Counsel fees and expenses.
- 412.1. — In general.
- 413. — Power to allow or award in general.
- 414. — Grounds for allowance.
- 415. — Charge on estate or interest therein.
- 416. — Application for allowance and proceedings thereon.

**(R) OPERATION AND EFFECT.**

- 417. Effect of probate on will in general.
- 418. Presumptions as to probate.
- 419. Custody and disposition of will after probate.
- 420. Record of will and certificate of probate as conveyance.
- 421. Collateral attack on probate or judgment.
- 422. Conclusiveness of probate or record.
- 423. — In general.
- 424. — Probate in common form.
- 425. — Probate in solemn form.
- 426. — Admission to record of will probated elsewhere.
- 427. — Execution, genuineness, validity, and contents of will.
- 428. — Validity of provisions of will.
- 429. — Will of personal property.
- 430. — Will of real property.
- 431. Conclusiveness of refusal or revocation of probate.
- 432. Conclusiveness and effect of adjudication as to validity of instrument or probate.
- 433. Admissibility, as evidence, of will or proofs, or of record or exemplified copy thereof.
- 434. Foreign probate or judgment.

**VI. CONSTRUCTION.****(A) GENERAL RULES.**

- 435. Application to wills in general.
  - (1). In general.
  - (2). Necessity of construction.
- 436. What law governs.
  - (1). In general.
  - (2). Domicile of testator in general.
  - (3). Time of death or time of execution of will, domicile at.
  - (4). As affected by property involved; personalty or realty.
  - (5). Directions of testator.
  - (6). Particular questions.
  - (6.1). — In general.
  - (7). — Trusts.
  - (8). — Powers.
- 437. Statutory provisions.
  - (1). In general.

**409. WILLS****VI. CONSTRUCTION.**(Cont'd)

- (2). Validity.
- (3). Time of death or time of execution of will; retroactivity.
- 438. Intention of testator.
- 439. — In general.
- 440. — Ascertainment from words of will.
- 441. — Situation of testator and circumstances of making of will.
- 442. — Contravention of law.
- 443. — General and particular intention.
- 444. — Giving effect in part, if not in full.
- 445. Construction in favor of instrument.
- 445.1. — In general.
- 446. — Validity in general.
- 447. — Legality of provisions.
- 448. — Operative effect, and construction against intestacy.
- 449. — Disposition of entire estate, or partial intestacy.
- 450. — Operative effect of all parts of will.
- 451. — Construction against failure or lapse of gift or other provision.
- 452. Construction in favor of heirs, next of kin, or surviving wife or husband.
- 453. Construction in favor of just, natural, or reasonable disposition.
- 454. Language of instrument.
- 455. — In general.
- 456. — Ordinary or arbitrary or peculiar meaning.
- 457. — Technical words.
- 458. — Same words in different parts of will, or applied to different subjects.
- 459. — Molding or change of language in general.
- 460. — Transposition of words.
- 461. — Substitution of words.
- 462. — Supplying words omitted.
- 463. — Rejection of superfluous or repugnant words.
- 464. — Mistakes in writing, grammar, or spelling.
- 465. — Punctuation.
- 466. — Particular words and phrases.
- 467. Recitals and statements as to reasons, intentions, and wishes of testator.
- 468. Separate clauses or parts.
- 469. — In general.
- 470. — Construction as a whole.

**VI. CONSTRUCTION.**(Cont'd)

- (1). In general.
- (2). Four corners of will.
- (3). Particular wills or provisions.
- 471. — Repugnant and conflicting provisions.
- 472. — Relative position.
- 473. — Partial invalidity.
- 474. Construing instruments together.
- 475. — In general.
- 476. — Wills and codicils.
- 477. Writings annexed or referred to in will.
- 478. Implied dispositions in general.
- 479. Construction by umpire, executor, or persons interested, and jurisdiction of courts.
- 480. Operation of will in general.
- 481. Time from which will speaks.
- 482. Operation as to after-acquired property.
- 483. Effect of change in condition or circumstances occurring subsequently to will.
- 484. Effect of conveyances or acts of testator subsequent to will.
- 485. Evidence to aid construction.
- 486. — In general.
- 487. — Showing intention of testator in general.
  - (1). In general.
    - (1.1). Ambiguity or uncertainty in language in general.
    - (1.2). Parol or extrinsic evidence in general.
  - (2). Situation and relations of testator and circumstances connected with making of will.
  - (3). Writings and declarations of testator.
  - (4). Mistakes and omissions.
  - (5). Nature of estate or interest created.
  - (6). Testimony of scrivener.
- 489. — Identification of persons or other objects.
  - (1). In general.
  - (2). Ambiguity or uncertainty in language in general.
    - (2.1). Parol or extrinsic evidence in general.
  - (3). Feelings and relations of testator as to persons involved.



## 409. WILLS

**VI. CONSTRUCTION.**(Cont'd)

- (4). Declarations and instructions of testator.
- (5). Mistake or omission.
- (6). Corporations, associations, or societies.
- 490. — Identification of property or other subject-matter.
  - (1). In general.
  - (2). Ambiguity or uncertainty in language.
  - (3). Parol or extrinsic evidence.
- 491. Questions for jury.
- (B) DESIGNATION OF DEVISEES, AND LEGATEES AND THEIR RESPECTIVE SHARES.**
- 492. Mode of designation in general.
- 493. Certainty in designation and description in general.
- 494. Individual name or other designation.
- 495. Words of relationship as words of donation or of limitation.
- 496. Husband and wife.
- 497. Children and grandchildren.
  - (1). In general.
  - (2). “Children” as including “grandchildren”.
  - (3). “Grandchildren” as including “great-grandchildren”.
  - (4). Stepchildren and children of the half blood or by different marriages.
  - (5). Adopted children.
  - (6). Children born out-of-wedlock.
  - (7). Children en ventre sa mere at death of testator or legatee.
- 498. Issue, descendants, or offspring.
- 499. Collaterals.
- 500. Parents and other ascendants.
- 501. Family.
- 502. Relatives.
- 503. Servants or employees.
- 504. Personal condition, occupation, or other particular description.
- 505. Heirs.
- 506. — In general.
  - (1). In general.
  - (2). Application of laws of descent and distribution in general.
  - (3). Husband or wife.

**VI. CONSTRUCTION.**(Cont'd)

- (4). Children and their issue, or collaterals.
- (5). Children born out-of-wedlock and adopted children.
- (6). “Heirs” of living person.
- (7). Devisees and legatees.
- 507. — Nature of property.
- 508. Next of kin.
- 509. — In general.
- 510. — Nature of property.
- 511. Representatives.
- 512. Deceased persons or their heirs or representatives.
- 513. Executors and administrators.
- 514. Corporations and associations in general.
- 515. Charitable institutions.
- 516. Educational institutions.
- 517. Religious societies.
- 518. Municipal corporations.
- 519. Persons included in residuary clause.
- 520. Erroneous description.
- 521. Classes.
- 522. — In general.
- 523. — Devise or bequest to class or to individuals.
- 524. — Time of ascertainment of class.
  - (1). In general.
  - (2). Ascertainment at testator’s death in general.
  - (3). Ascertainment at date of will.
  - (4). Birth of children after execution of will and before death of testator.
  - (5). Birth of children after death of testator in general.
  - (6). Ascertainment at termination of precedent estate or time of payment or distribution.
  - (6.1). — In general.
  - (7). — Precedent birth of children.
  - (8). — Subsequent birth of children.
  - (9). Ascertainment at majority or marriage of devisees or legatees.
- 525. Shares or portions and division of estate in general.
- 526. Shares and division of residue.
- 526.1. — In general.

**409. WILLS****VI. CONSTRUCTION.**(Cont'd)

- 527. — General residue.
- 528. — Particular residue.
- 529. Shares of and division among members of class.
- 530. Taking per stirpes or per capita.
- 531. — In general.
  - (1). In general.
  - (2). Devise or bequest to heirs or representatives in general.
  - (3). Devise or bequest to children or heirs of different persons.
  - (4). Devise or bequest to persons and children or heirs of other persons.
  - (5). Devise or bequest to parent and children.
- 532. — Members of classes.
- 533. — Survivors or representatives of deceased devisees or legatees.
- 534. Restriction of devisee or legatee to specific amount or particular provision or benefit.
- 535. Exclusion from provisions of or benefits under will.

**(C) DEATH OF DEVISEE OR LEGATEE.**

- 536. Succession on death of devisee or legatee before gift takes effect in general.
- 537. Death of devisee or legatee as contingency.
  - 537.1. — In general.
- 538. — Time of death in general.
- 539. — Devise or bequest to take effect immediately.
- 540. — Devise or bequest to take effect after prior estate, or at time appointed.
- 541. Death coupled with other contingency.
- 542. — In general.
  - (1). In general.
  - (2). Happening of all or part of several contingencies.
  - (3). Happening of contingency as to one or more of several devisees or legatees.
  - (4). Effect of closing of contingencies.
- 543. — Dying before time specified, or before attaining certain age.
- 544. — Dying unmarried.

**VI. CONSTRUCTION.**(Cont'd)

- 545. — Dying without issue.
  - (1). In general.
  - (2). Time of death in general.
  - (3). Death before testator.
  - (4). Death before termination of prior estate.
  - (5). Death before attaining certain age.
  - (6). Death or survival of issue.
- 546. Survivorship.
  - 546.1. — In general.
- 547. — Devises or bequests to survivors in general.
- 548. — Persons included and shares as survivors.
- 549. — Further survivorship in shares accrued by survivorship.
- 550. Representation.
  - 551. — In general.
  - 552. — Representation under statutory provisions.
    - (1). In general.
    - (2). Nature of property devised or bequeathed or of estate created.
    - (3). Persons entitled to take and their respective shares.
    - (4). Representatives of persons deceased before execution of will.
    - (5). Devise or bequest to class.
    - (6). Succession to rights and liabilities of decedent.
- 553. Substitution.
  - 553.1. — In general.
- 554. — Original or substitutional nature of provisions.
- 555. — Substitution of issue or others in general.
  - (1). In general.
  - (2). Issue of devisees or legatees dying before execution of will.
  - (3). Persons included and shares as substitutes.
  - (4). Words of relationship as words of substitution or of limitation.
- 556. — Gifts over to executors or administrators.
- 557. — Substitution to shares of members of classes.

## 409. WILLS

(D) DESCRIPTION OF PROPERTY.	VI. CONSTRUCTION.(Cont'd)
<p>558. Mode of description.</p> <p>(1). In general.</p> <p>(2). Property to be purchased for legatee.</p> <p>559. Property, estate, or other general terms.</p> <p>560. Real property and interests therein in general.</p> <p>(1). In general.</p> <p>(2). Location of property.</p> <p>(3). Title or interest of testator in general.</p> <p>(4). Devise of land as including interest under sale or mortgage.</p> <p>(5). Selection by devisee.</p> <p>561. Particular description of specific real property.</p> <p>(1). In general.</p> <p>(2). Land adjoining or appurtenant to property described in general terms.</p> <p>(3). Possession and occupancy.</p> <p>(4). Undivided interest in land.</p> <p>562. Appurtenances to real property.</p> <p>563. Real property with personal property thereon.</p> <p>564. Rents, profits, income, or use and occupation of real property.</p> <p>(1). In general.</p> <p>(2). As passing interest in land to which appurtenant.</p> <p>(3). Nature and extent of use and enjoyment.</p> <p>565. Personal property in general.</p> <p>(1). In general.</p> <p>(2). Deduction of debts and expenses.</p> <p>(3). Bequest of personal property as including interest in real estate.</p> <p>(4). Title or interest of testator.</p> <p>566. Money.</p> <p>567. Amount of pecuniary legacy.</p> <p>568. Amount and duration of annuity.</p> <p>569. Credits and rights of action in general.</p> <p>570. Corporate or other stock or bonds, and other investments and securities.</p> <p>571. Life insurance.</p> <p>572. Personal property described by location or use.</p> <p>573. Interest, income, or produce of personal property.</p>	<p>(.5). In general.</p> <p>(1). Bequest of property or fund as including interest, income, or produce.</p> <p>(2). Bequest of interest or income as including property or fund from which payable.</p> <p>(3). Property constituting capital, and nature, extent, and duration of use and enjoyment.</p> <p>574. Debts or other obligations released.</p> <p>575. Words of description of both real and personal property.</p> <p>576. Source or mode of acquisition of property.</p> <p>577. Community property.</p> <p>578. After-acquired property.</p> <p>(1). In general.</p> <p>(2). General or specific words of description.</p> <p>(2.1). — In general.</p> <p>(3). — Residuary clause.</p> <p>(4). Construction and operation of statutory provisions.</p> <p>(5). Real or personal property.</p> <p>579. General and specific words of description.</p> <p>580. Repugnant or conflicting descriptions.</p> <p>581. Erroneous description.</p> <p>582. Devise or bequest of property of specified value.</p> <p>583. General devise or bequest of entire property or estate.</p> <p>584. Exception from general devise or bequest.</p> <p>585. Substituted, or cumulative, or additional devise or bequest.</p> <p>(1). In general.</p> <p>(2). Provisions of codicils.</p> <p>(3). Participation in residue.</p> <p>(4). Participation as remainderman.</p> <p>(5). Rights of devisee or legatee under later devise or bequest.</p> <p>586. Residuary clause.</p> <p>586.1. — In general.</p> <p>587. — General residue.</p> <p>(1). In general.</p> <p>(2). Restriction of residuary clause by specific words.</p>

**409. WILLS****VI. CONSTRUCTION.**(Cont'd)

- (3). Real or personal estate.
- (4). Income.
- (5). Particular estates or interests.
- (6). Amount of residue or of legacy payable therefrom.
- 588. — Particular residue.
- 589. Devises and bequests in execution of powers.
  - (1). In general.
  - (2). Construction of instruments together.
  - (3). Intent to exercise power in general.
  - (4). Will disposing of all donee's property; general devise or bequest.
  - (5). Residuary clause.
  - (6). Failure to refer to power.
  - (7). Operation and effect of exercise of power.

**(E) NATURE OF ESTATES AND INTERESTS CREATED.**

- 590. Creation by will in general.
- 591. Technical words of limitation in general.
- 595. Estates by implication in general.
- 596. Fee simple.
- 596.1. — In general.
- 597. — Words necessary or sufficient in general.
  - (1). In general.
  - (2). Separate clauses or parts of will.
  - (3). Construction and operation of statutory provisions.
  - (4). Words of purchase or of limitation.
  - (5). Fee charged with other estate or interest.
  - (6). Devises in lieu of dower or for separate use of spouse.
- 598. — Devise without words of limitation.
- 599. — Implication in general.
- 600. — General devise with power of disposition.
  - (1). In general.
  - (2). Disposition for benefit of children or others.
  - (3). Construction and operation of statutory provisions.

**VI. CONSTRUCTION.**(Cont'd)

- (4). Limitation over on death of devisee or other event.
- 601. — Limitations or other provisions repugnant to or inconsistent with devise in fee.
  - (1). In general.
  - (2). Limitation over of property undisposed of.
  - (3). Limitation over on marriage of devisee.
  - (4). Restraint of alienation.
  - (5). Trusts and other limitations on enjoyment.
  - (6). Restrictions as to use of property.
  - (7). Devises for separate use of spouse.
  - (8). Precatory words.
  - (9). Devise, bequest, or property to which limitation or provision applies.
  - (10). Words of purchase or of limitation.
- 602. Qualified, defeasible, or conditional fees.
  - (1). In general.
  - (2). Implication.
  - (3). Defeat of estate by death without issue.
  - (4). Defeat of estate by birth and survivorship of issue.
  - (5). Defeat of estate by marriage of devisee.
  - (6). Conversion into fee simple.
- 604. Estates tail.
- 604.1. — In general.
- 605. — Words necessary or sufficient in general.
- 606. — Implication.
- 607. — Conversion into fee-simple or other estate under statutory provisions.
  - (.5). In general.
  - (1). Conversion into fee simple.
  - (2). Conversion into life estate with remainder in fee.
- 608. Application of rule in Shelley's Case.
  - (1). In general.
  - (2). Intention of testator.
  - (3). Life estate with limitation to heirs.
  - (3.1). — In general.
  - (4). — Personal property.

## 409. WILLS

## VI. CONSTRUCTION.(Cont'd)

- (5). — Power or restraint of disposition.
- (6). — Words of distribution.
- 609. Absolute estate in personal property.
- 609.1. — In general.
- 610. — Words necessary or sufficient in general.
  - (1). In general.
  - (2). General bequest with power of disposition.
  - (3). Bequest in lieu of dower or for separate use of spouse.
  - (4). Qualified or defeasible estate.
  - (5). Separate clauses or parts of will.
- 611. — Implication.
- 612. — Limitations or other provisions repugnant to or inconsistent with absolute bequest.
  - (1). In general.
  - (2). Limitation over of property undisposed of.
  - (3). Trusts, limitations on enjoyment, and restraint of alienation.
  - (4). Precatory words.
  - (5). Devise, bequest, or property to which limitation or provision applies.
- 613. Life estates.
- 613.1. — In general.
- 614. — Words necessary or sufficient in general.
  - (1). In general.
  - (2). Devise or bequest with limitation over in general.
  - (3). Devise or bequest without limitation over.
  - (4). Personal property in general.
  - (4.5). Personal property the use of which consists in its consumption.
  - (5). Separate clauses or parts of will.
  - (6). Limitation to heirs, issue, or children of life tenant.
  - (6.1). — In general.
  - (7). — Construction and operation of statutory provisions.
  - (8). — Personal property.
  - (9). — Limitation to others on failure of issue.

## VI. CONSTRUCTION.(Cont'd)

- (10). — Children unborn at date of will or death of testator.
- (11). — Words of distribution.
- (12). — Devises or bequests for separate use of spouse.
- (13). Estates determinable on marriage.
- (14). Devises or bequests in lieu of dower or for separate use of spouse.
- (15). Life estate charged with other estate or interest.
- (16). Devise or bequest for use and benefit of life tenant and children or others.
- (17). Devise or bequest of use or income.
- (18). Loan of property.
- (19). Duration of estate and successive life estate.
- 615. — Implication.
- 616. — Devise or bequest for life with power of control or disposition.
  - (1). In general.
  - (2). Construction and operation of statutory provisions.
  - (3). Personal property.
  - (4). Limitation over of property undisposed of in general.
  - (5). Disposal at death of devisee or legatee.
  - (6). Conditional, contingent, or limited disposition.
  - (7). Control or disposition for benefit of life tenant and of children or others.
  - (8). Repugnancy or inconsistency with estate in remainder.
  - (9). Separate clauses or parts of will.
- 617. — Limitations or other provisions repugnant to or inconsistent with devise or bequest for life.
- 618. Income.
- 619. Annuities.
- 620. Maintenance.
- 621. Collateral limitations.
- 622. Remainders.
- 623. Cross-remainders.
- 624. Conditional limitations.

**409. WILLS****VI. CONSTRUCTION.**(Cont'd)

- 625. Executory devises or bequests, and shifting, springing, or other future uses, or estates in the nature thereof.
- 626. Concurrent or successive interests.
- 627. Estates in severalty, joint tenancy, or tenancy in common.
  - (1). In general.
  - (2). Construction and operation of statutory provisions.
  - (3). Words of distribution.
  - (4). Restrictions and other provisions as to part of several devisees or legatees.
  - (5). Estates by the entirety.

**(F) VESTED OR CONTINGENT ESTATES AND INTERESTS.**

- 628. Nature and grounds of distinction.
- 629. Construction in favor of vesting.
- 630. Contingency on which estate or interest depends in general.
  - (1). In general.
  - (2). Postponement of time of payment or distribution in general.
  - (3). Marriage or attainment of certain age.
  - (4). Sale of property and distribution of proceeds.
  - (5). Title and power of control or disposition in executor or trustee.
  - (6). Directions to pay or divide.
  - (7). Directions for investment and accumulation.
  - (8). Conditions and restrictions.
  - (9). Enjoyment of income or other benefit before payment or distribution.
  - (10). Limitation over on death of devisee or legatee.
  - (11). Devise or bequest to survivors.
  - (12). Words indicating time of vesting.
  - (13). Devise or bequest of residue or of rents, profits, and income.
- 631. As affected by nature of property devised or bequeathed.
- 632. Legacies payable out of personalty.
- 633. Legacies charged on real property or on both real and personal property.
- 634. Remainders.

**VI. CONSTRUCTION.**(Cont'd)

- (1). In general.
- (2). Construction and operation of statutory provisions.
- (3). Certainty as to beneficiaries and as to time of enjoyment.
- (4). Power of disposition in first taker.
- (4.1). — In general.
- (5). — Disposition to or for benefit of remainderman.
- (6). Sale of property, disposition of proceeds, and interposition of trustee.
- (7). Directions to pay or convey to or divide among devisees or legatees.
- (8). Limitation over or substitution on death or failure of remaindermen.
- (9). Limitations dependent on contingency.
- (10). Limitation over to persons living and the issue of persons deceased.
- (10.1). — In general.
- (11). — Directions to pay or convey to or divide among devisees or legatees.
- (12). Devise or bequest to survivors.
- (13). Remainder to heirs or persons entitled to take by descent.
- (14). Devise or bequest to class.
- (15). Postponement of time of payment or distribution to remaindermen.
- (16). Conditions and restrictions.
- (17). Birth of children between time of death of testator and termination of life estate.
- (18). Vesting dependent on several contingencies.
- (19). Words indicating time of vesting.
- (20). Limitation over of principal after life estate in income.
- 635. Opening of vested estates or interests to let in after-born children.
- 636. Divesting vested estates or interests.
- 637. Contingent estates or interests becoming vested.

## 409. WILLS

**VI. CONSTRUCTION.**(Cont'd)

638. Extinguishment of contingent estate or interest.

**(G) CONDITIONS AND RESTRICTIONS.**

- 639. Nature and creation of conditions.
- 640. Validity of conditions.
- 641. — In general.
- 642. — Assumption of name, residence, and other personal acts.
- 643. — Religious belief.
- 644. — Character and conduct.
- 645. — Maintenance or services.
- 646. — Payment or other performance of obligations imposed.
- 647. — Marriage.
- 648. — Insolvency or bankruptcy.
- 649. — Restraint of alienation.
- 650. — Use of property.
- 651. — Contest of will or other litigation.
- 652. — Claims against estate.
- 653. — Repugnancy to devise or bequest.
- 654. — Effect of invalidity.
- 655. Construction and operation of conditions.
- 656. — In general.
- 657. — Conditions precedent.
- 658. — Conditions subsequent.
  - (1). In general.
  - (2). Contest of will or other litigation.
- 659. Performance or breach.
- 660. — In general.
- 661. — Time for performance.
- 662. — Sufficiency of performance.
- 663. — Excuses for nonperformance.
- 664. — Discharge by impossibility of performance.
- 665. — Breach and effect thereof.
  - (1). In general.
  - (2). Contest of will or other litigation.
- 666. Release or waiver of condition or of forfeiture for breach.
- 667. Enforcement of forfeiture.
  - (1). In general.
  - (2). Contest of will or other litigation.
- 668. Restrictions as to use of property.

**(H) ESTATES IN TRUST AND POWERS.****1. CREATION OF TESTAMENTARY TRUSTS.**

- 669. Creation of testamentary trusts in general.
- 670. Words necessary or sufficient to create trust.
- 671. — In general.
- 672. — Grants of authority or directions importing trust.
  - (1). In general.
  - (2). Discretion of devisee or legatee as to disposition.
  - (3). Authority or directions to executor.
- 673. — Provisions for maintenance.
- 674. — Spendthrift trusts.
- 675. — Precatory words.
- 676. Implication of trust.
- 677. Consideration of extrinsic facts and circumstances.
- 678. Limitations or other provisions repugnant to or inconsistent with trust.

**2. CONSTRUCTION OF TESTAMENTARY TRUSTS.**

- 680. In general.
- 681. Trustees.
  - (1). In general.
  - (2). Estate, title, or interest of trustee.
- 682. Cestuis que trust.
  - (1). In general.
  - (2). Estate, title, or interest of beneficiaries.
- 683. Property devised or bequeathed.
- 684. Capital and income.
  - 684.1. — In general; property constituting capital.
  - 684.2. — Right to capital or income in general.
    - (1). In general.
    - (2). Invasion of corpus.
      - (2.1). — In general.
      - (3). — Grounds and purposes in general.
      - (4). — Support or maintenance.
      - (5). — Other resources of beneficiary.
      - (6). — Paying annuities or fixed amounts.
      - (7). — Extent of invasion.

**409. WILLS****VI. CONSTRUCTION.**(Cont'd)

- 684.3. — Distinction between capital and income.
- (1). In general.
  - (2). Allocation of receipts in general.
  - (3). Sale proceeds.
  - (4). Dividends or other corporate distributions.
  - (4.1). — In general.
  - (5). — Liquidating or extraordinary dividends.
  - (6). — Stock dividends or stock splits.
  - (7). Wasting or unproductive assets, receipts from.
- 684.4. — Amount of capital.
- 684.5. — Deduction of expenses, costs, and charges.
- 684.6. — Excess or deficiency of income.
- 684.7. — Accrual of right to capital or income.
- 684.8. — Mode of payment or distribution in general.
- 684.9. — Amount of income payable to beneficiary.
- 684.10. — Discretion of executor or trustee.
- (1). In general.
  - (2). Payment or accumulation of income.
  - (3). Payment or distribution of principal.
  - (3.1). — In general.
  - (4). — Support or maintenance.
  - (5). — Consideration of beneficiary's other resources.
  - (6). Allocation to capital or income.
685. Purposes of trust.
686. Duration and termination of trust or trust estate.
- (1). In general.
  - (2). Death of beneficiary, and survivorship.
  - (3). Marriage or majority of beneficiaries.
  - (4). Conveyance or release.
687. Limitation over or other disposition of property on termination of trust.
- (1). In general.

**VI. CONSTRUCTION.**(Cont'd)

- (2). Devisees, heirs, and representatives of beneficiaries.
  - (3). Heirs of testator.
  - (4). Rights of residuary legatees.
  - (5). Nature of estate vesting after termination of trust.
  - (6). Mode of payment, distribution, or conveyance.
688. Effect of failure of trust.
- 3. TESTAMENTARY POWERS.**
689. Creation of testamentary powers.
690. Construction of testamentary powers.
691. — In general.
692. — Power of appointment, revocation, or disposition.
- (1). In general.
  - (2). Support and maintenance of donee or beneficiary.
  - (3). Property or fund subject to disposition.
  - (4). Persons to whom property may be given or conveyed.
  - (5). Mode of disposition.
  - (6). Duration and termination of right.
  - (7). Interest of donee of power and of beneficiary.
694. Limitation over or other disposition of property on failure of execution of power.

**(I) ACTIONS TO CONSTRUE WILLS.**

695. Nature and form of remedy.
- (1). In general.
  - (2). Necessity of construction and nature of question involved in general.
  - (3). Necessity that will involve trust.
  - (4). Contingent or future rights and matters of speculation or hypothesis.
696. Statutory provisions.
697. Right of action.
- (1). In general.
  - (2). Devisees and legatees.
  - (3). Executors, administrators, and trustees.
698. Jurisdiction and venue.
699. Time to sue, limitations, and laches.
- See also LIMITATION OF ACTIONS.*



**409. WILLS****VI. CONSTRUCTION.(Cont'd)**

- 700. Parties.
- 701. Process or notice.
- 702. Pleading.
- 703. Evidence.
- 704. Trial or hearing, and scope of inquiry.
- 705. Judgment or decree, and enforcement thereof.
- 706. Review.
- 707. Fees and costs.
  - (1). In general.
  - (2). Payment from estate.
  - (3). Payment from property or fund involved in controversy.

**VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.****(A) NATURE OF TITLE AND RIGHTS IN GENERAL.**

- 708. Rights of devisees or legatees before probate or establishment of will.
- 709. Disqualification of devisee or legatee to take.
  - 709.1. — In general.
- 710. — Unworthiness or misconduct in general.
- 711. — Causing or procuring death of testator.
- 712. Devise or bequest to attesting witness.
- 713. Devise or bequest to heir or next of kin.
- 714. Devise or bequest to creditor.
- 715. Devise or bequest to debtor.
- 716. Devise or bequest to executor or trustee.
- 717. Acceptance or renunciation or disclaimer of devise or legacy.
  - (1). In general.
  - (2). Time for renunciation or disclaimer; relation back.
- 718. Estoppel by acceptance of devise or legacy.
- 719. Abandonment or forfeiture of devise or legacy.
- 720. Title of devisees and legatees.
- 721. — In general.
- 722. — Real property and interests therein.
- 723. — Personal property in general.
- 724. — Rights in action in favor of estate.
- 725. Option to purchase or take at valuation property of estate or to take money in lieu of property.

**VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.(Cont'd)**

- 726. Rights as against executor.
- 727. Possession and control of property.
- 728. Rents and profits, income, and accumulations.
- 729. Annuities.
- 730. Maintenance from estate.
- 731. Charges and claims in favor of estate against devisees and legatees.
- 732. Property or fund out of which legacies are to be paid.
  - (1). In general.
  - (2). Realty or personalty in general.
  - (3). Payment from particular property or fund.
  - (4). Payment from property specifically devised or bequeathed.
  - (5). Payment from capital or income.
  - (6). Payment from residue or intestate estate.
  - (7). Loss or other disposition of property or fund and necessity and effect of conversion.
- 733. Time of accrual of right to devise or legacy.
  - (1). In general.
  - (2). Termination of precedent estate or interest in general.
  - (3). Attainment of certain age or marriage of devisees or legatees.
  - (4). Death of devisees or legatees.
  - (5). Contingencies happening before death of testator.
  - (6). Probate or record of will.
  - (8). Bequest of interest or income.
  - (9). Annuities.
  - (10). Residuary devise or bequest.
  - (11). Legacies charged on property, estate, or interest.
  - (12). Discretion of executor as to payment or distribution.
- 734. Interest on legacies.
  - (1). In general.
  - (2). Time from and during which interest runs.
    - (2.1). — In general.
  - (3). — Effect of statutory provisions.

**409. WILLS****VII. RIGHTS AND LIABILITIES OF DEVISEES AND LEGATEES.(Cont'd)**

- (4). — Time when legacies are payable.
- (5). — Legacies to children or to widow in lieu of dower.
- (6). — Legacy of income, annuity, or maintenance.
- (7). — Specific legacies and legacies charged on property devised or bequeathed.
- (8). — Probate or contest of will and settlement of estate.
- (9). — Demand and acceptance.
- (10). Rate and computation.
- (11). Estoppel and waiver.
- (12). Property or fund from which payable.
- 735. Apportionment of income or annual or other stated payments.
- 736. Mutual rights and liabilities of devisees and legatees.
  - (1). In general.
  - (2). Debts and expenses.
  - (3). Income and property taxes.
- 740. Conveyances, agreements, and other transactions between devisees and legatees.
  - (1). In general.
  - (2). Recognition or evasion of provisions of will.
  - (3). Requisites and validity.
  - (4). Construction and operation.
- 741. Actions between devisees and legatees.
- 742. Conveyances of property by devisees or legatees.
- 743. Assignments of legacies.
- 744. Rights and liabilities of purchasers from or assignees of devisees or legatees.
- 745. Actions by devisees or legatees.
- 746. — In general.
- 747. — Relating to real property or interests therein.
- 748. — Relating to personal property.
- 749. Actions against devisees or legatees.

**(B) CONSTRUCTION OF DEVISES AND BEQUESTS IN GENERAL.**

- 750. In general.

**(C) SPECIFIC DEVISES.**

- 751. In general.

**(D) SPECIFIC BEQUESTS.**

- 753. In general.
- 754. Stocks, bonds, and other securities.

**(E) DEMONSTRATIVE BEQUESTS.**

- 755. In general.

**(F) GENERAL BEQUESTS.**

- 756. In general.

**(G) ADVANCEMENTS.**

- 757. In general.
- 758. Application of doctrine in general.
- 759. Construction and operation of testamentary provisions.
  - (1). In general.
  - (2). Debts or obligations as advancements.
  - (3). Gifts as advancements.
  - (4). Advancements to husband, wife, parent, or other relative of devisee or legatee.
  - (5). Effect of repayment, failure, or other extinguishment of obligation or gift constituting advancement.
  - (6). Time of advancement.
- 760. Amount.
- 761. Evidence.
- 762. Deduction and adjustment.

**(H) ADEMPMENT.**

- 764. In general.
- 765. Legacies subject to ademption.
- 766. Gift or advance by testator.
- 767. Transfer or change of subject-matter.
- 768. Loss or destruction of subject-matter.
- 769. Revival of legacy adeemed.
- 770. Evidence.
- 771. Operation and effect.

**(I) SATISFACTION.**

- 772. In general.

**(J) LAPSE.**

- 774. In general.

## 409. WILLS

**VII. RIGHTS AND LIABILITIES OF DEVISEES  
AND LEGATEES.(Cont'd)**

- 775. Death, disqualification, or failure of devisee or legatee.
- 776. Failure of performance of condition or of contingency.
- 777. Effect as to codevisees, colegatees, or members of class.

**(K) ELECTION.**

- 778. Nature and grounds in general.
- 779. Statutory provisions.
- 780. Testamentary provisions under which election arises.
- 781. — In general.
- 782. — Provisions for surviving wife.
  - (1). In general.
  - (2). Express or implied restriction to provision of will.
  - (3). Nature of provision in general.
  - (4). Effect on scheme of disposition.
  - (5). Provisions for life or widowhood of wife or minority of children.
  - (6). Management and disposition of property by executors or trustees.
  - (7). Amount or value of provision.
  - (8). Will making no provision for widow.
  - (9). Wife as sole heir or distributee.
  - (10). Provisions of will and rights as heir or distributee of intestate estate.
  - (11). Provisions by will and provisions by act not testamentary.
  - (12). Provisions of will and adverse claim to property.
  - (13). Provisions of will and right to homestead.
- 783. — Provisions for surviving husband.
- 784. Estates and interests to which election is applicable.
- 785. Persons entitled to elect.
  - (1). In general.
  - (2). Effect of death.
- 785.5. Waiver, release, or forfeiture of right.
  - (1). In general.
  - (2). Antenuptial agreements.
  - (3). Separation agreements.

**VII. RIGHTS AND LIABILITIES OF DEVISEES  
AND LEGATEES.(Cont'd)**

- (4). Abandonment, desertion, nonsupport, separation, or divorce.
- 786. Capacity to elect.
- 787. Persons as against whom election may be enforced.
- 788. Mode of election and proceedings therefor in general.
  - (1). In general.
  - (2). Evidence.
  - (3). Review.
- 789. Proceedings to compel election.
- 790. Time for making election.
- 791. Acts constituting election.
- 792. — In general.
  - (1). In general.
  - (2). Maintaining or participating in actions or proceedings.
  - (3). Knowledge as to rights under and against will.
  - (4). Probate of will and acts and proceedings as executor.
  - (5). Evidence of election.
- 793. — Execution and filing of written instrument.
- 794. — Acts of acceptance, ownership, or assent to will.
- 795. — Failure to dissent from will.
- 796. Revocation of election.
- 797. Actions to set aside election.
- 798. Operation and effect.
- 799. — In general.
- 800. — Taking under will.
- 801. — Taking against will.
  - (1). In general.
  - (2). Benefits or rights under will.
  - (3). Scope and extent of rights in general.
  - (4). Homestead, allowances and exemptions.
  - (5). Computation of shares; assets included.
    - (5.1). — In general.
    - (5.2). — Augmented estate in general.
    - (5.3). — Nonprobate assets and transfers in general.
  - (6). — Inter vivos trusts.
  - (6.1). — Insurance proceeds.

**409. WILLS****VII. RIGHTS AND LIABILITIES OF DEVISEES  
AND LEGATEES.(Cont'd)**

- (7). — Deduction of debts, ex-  
penses, and taxes.
- (8). Allotment of share.
- (8.1). — In general.
- (9). — Application of will benefits  
and distribution of difference.
- 802. — Rights of other devisees and lega-  
tees.
  - (1). In general.
  - (2). Remainders and other future or  
contingent estates.
  - (3). Residuary legatees.
  - (4). Income and accumulations.
  - (5). Compensation for loss or diminu-  
tion of devise or bequest.
  - (6). Liability as to surviving spouse's  
share and charges on property.
- 803. — Rights of creditors of testator.

**(L) ABATEMENT.**

- 804. Nature and grounds in general.
- 805. Insufficiency of estate in general.
- 806. Intention of testator as to preference  
and provisions of will relating thereto  
in general.
- 807. Legacies or devises subject to abatement  
in general.
- 808. Bequests in satisfaction of debts or for  
other consideration.
- 809. Devise or bequest in lieu of dower or  
other statutory right.
- 810. Income or annuities.
- 811. Residuary legacies.
- 812. Specific devises or bequests.
- 813. Demonstrative legacies.
- 814. Lapsed devises or bequests.
- 815. Right to require abatement.
- 816. — In general.
- 817. — Residuary devisees and legatees.
- 818. Deduction and adjustment.

**(M) LEGACIES CHARGED ON PROPERTY,  
ESTATE OR INTEREST.**

- 819. Testamentary charges in general.
- 820. Charge on property of estate in general.
  - (1). In general.
  - (2). Charge on realty implied from di-  
rection for sale or conversion.

**VII. RIGHTS AND LIABILITIES OF DEVISEES  
AND LEGATEES.(Cont'd)**

- (3). Implication arising from nature  
and amount of personalty.
- (4). Nature and extent of charge and  
property or interest liable there-  
for.
- (5). Lien on property charged.
- 821. Charge on property or interest devised  
or bequeathed.
  - (1). In general.
  - (2). Implication arising from nature  
and amount of personalty.
  - (3). Charge of income or annuity.
  - (4). Charge of maintenance, support,  
and education.
  - (5). Nature and extent of charge.
  - (6). Property or interest affected by  
charge.
- 822. Charge on residue.
- 823. Personal liability of devisee or legatee of  
property charged.
- 824. Conveyances and incumbrances by devi-  
sees.
- 825. Release, waiver, or other extinguishment  
of charge.
- 826. Enforcement of charge.
  - (.5). In general.
  - (1). Nature and form of remedy.
  - (2). Rights of actions, conditions prec-  
edent, and defenses.
  - (3). Jurisdiction and limitations.  
*See also LIMITATION OF ACTIONS.*
  - (4). Parties.
  - (5). Pleading and evidence.
  - (6). Judgment or decree and relief  
awarded.
  - (7). Sale.

**(N) DEBTS OF TESTATOR AND INCUMBRANCES  
ON PROPERTY.**

- 827. Nature and grounds of liability of devi-  
sees and legatees.
- 828. What law governs.
- 829. Statutory provisions.
- 830. Liabilities on receipt of property of es-  
tate in general.
- 831. Liabilities on receipt of legacy or other  
personalty.
- 832. — In general.
- 833. — Debts enforceable.

## 409. WILLS

**VII. RIGHTS AND LIABILITIES OF DEVISEES  
AND LEGATEES.(Cont'd)**

- 834. — Extent of liability.
- 835. Liabilities on devise of realty.
- 836. — In general.
- 837. — Debts enforceable against devisees in general.
- 838. — Specialties and debts of record.
- 839. — Covenants of testator relating to land.
- 840. — Liens and incumbrances on land.
  - (1). In general.
  - (2). Exoneration.
- 841. — Liens for debts as against devisees.
- 842. Conveyances and incumbrances by devisees.
- 842.1. — In general.
- 843. — Effect as to liabilities of devisees.
- 844. — Rights and liabilities of purchasers in general.
- 845. — Bona fide purchasers.
- 846. Apportionment of debts.
- 847. Actions against devisees, legatees, or purchasers.
  - (1). Nature and form of remedy and jurisdiction.
  - (2). Rights of action, defenses, limitation, and laches, and conditions precedent.

*See also LIMITATION OF ACTIONS.*

- (3). Parties, pleading, and evidence.
- (4). Judgment and execution.
- (5). Sale.
- (6). Costs.

848. Contribution.

**(O) VOID, LAPSED, AND FORFEITED DEVISES  
AND BEQUESTS, AND PROPERTY AND  
INTERESTS UNDISPOSED OF.**

- 849. Disposition or devolution in general.
- 850. Statutory provisions.
- 851. Effect of failure of devise or bequest on limitation over or other disposition.
- 852. — In general.
- 853. — Acceleration of remainder or other subsequent interest.
- 854. — Right to income or accumulations.
- 855. Effect of failure of limitation over or other disposition on precedent estate.
- 856. Testamentary provisions as to failure of devises or bequests.

**VII. RIGHTS AND LIABILITIES OF DEVISEES  
AND LEGATEES.(Cont'd)**

- 857. Effect of residuary provisions.
- 858. — In general.
  - (.5). In general.
  - (1). Devises and bequests which fall into residuum in general.
  - (2). Construction and operation of statutory provisions.
  - (3). Real property.
  - (4). Lapse of devise or bequest on breach of condition or on death of beneficiary.
  - (5). Property undisposed of.
  - (6). Rents, profits, income, and accumulations.
- 859. — Particular residuary clauses.
- 860. — Rights of residuary devisees and legatees.
- 861. Failure of residuary devise or bequest.
- 862. — In general.
- 863. — Codevisees or colegatees.
- 864. Partial intestacy.
- 865. — In general.
  - (1). In general.
  - (2). Suspension of vesting or accrual of interest and postponement of sale or distribution.
  - (3). Rents, profits, and income.
  - (4). Persons entitled to take and their respective shares.
- 866. — Rights of heirs and next of kin.

**(P) RIGHTS AND REMEDIES OF CREDITORS  
OF DEVISEES AND LEGATEES.**

- 867. Right to subject interests under will in general.
- 868. Provisions of will as to debts of devisee or legatee.
- 869. Interests or rights which may be subjected.
- 870. Effect of indebtedness of devisee or legatee to testator.
- 871. Exercise by creditor of rights of devisee or legatee under will.
- 872. Actions and other proceedings by creditors.

**410. WITNESSES****410. WITNESSES****SUBJECTS INCLUDED**

Production of oral testimony at trial of cause in general, civil or criminal

Competency to testify

Procuring attendance for that purpose, and production of documents by witnesses

Examination of witnesses

Their credibility, and corroborating, impeaching, or contradicting their testimony

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

Administrative proceedings, production of oral testimony in, see ADMINISTRATIVE LAW AND PROCEDURE and other specific topics

Attesting or subscribing witnesses to written instruments, see DEEDS, WILLS, and other specific topics relating to particular instruments

Evidence, competency and admissibility in general, see EVIDENCE and specific topics—

Criminal prosecutions, evidence in, and especially testimony of accomplices, conspirators and codefendants, see CRIMINAL LAW and specific topics relating to particular offenses

Opinion evidence, including competency of experts and examination thereof as to competency, see CRIMINAL LAW, EVIDENCE

False testimony as offense, see PERJURY

Military cases decided by military courts, see MILITARY JUSTICE in the Federal Practice Digests

Privileged communications and confidential relations, see PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY

Written form, taking and use of testimony in, see AFFIDAVITS, FEDERAL CIVIL PROCEDURE, PRETRIAL PROCEDURE

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1. Authority to compel attendance.

2. Right of accused to compulsory process.

(1). In general.

(2). Constitutional and statutory provisions.

(3). Continuance on account of absence of witness.

(4). Number of witnesses.

3. Persons who may be required to appear and testify.

4. — In general.

5. — Privileges and exemptions.

6. Place where attendance may be required; obtaining presence of witness from without jurisdiction.

7. Subpoena.

8. — In general.

9. — Application and proceedings thereon.

10. — Issuance.

11. — Form and requisites.

12. — Places where writ may be served.

13. — Service.

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**410. WITNESSES****I. IN GENERAL.**(Cont'd)

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17. Attachment to compel attendance.
18. Habeas corpus ad testificandum.
19. Bond, recognizance, or other security for appearance.
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21. Punishment of disobedience to subpoena as contempt.
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  - (1). In general.
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**II. COMPETENCY.**(Cont'd)

44. Religious belief.
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  - (1). In general.
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46. Character and conduct in general.
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  - (2). Nature of offense.
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  - (4). Proceedings in which evidence is offered and nature of evidence.
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51. Husband and wife.
- 51.5. — In general.
52. — Incompetency for or against each other in general.
  - (1). In general.
  - (3). Nature of action or issue in general.
  - (4). Actions by or against husband or wife in representative capacity.
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  - (8). Compelling husband or wife to testify.
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  - (4). Cross-examination.
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54. — Testimony for or against husband or wife in general.
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**410. WITNESSES****II. COMPETENCY.(Cont'd)**

- (1). In general.
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- 57. — Marriage, nonaccess, and illegitimacy of children.
- 58.1. — Adultery.
- 58.2. — Bigamy.
- 58.3. — Criminal conversation.
- 58.4. — Alienation of affections.
- 59. — Actions between husband and wife in general.
- 60. — Actions for divorce or annulment of marriage.
  - (1). In general.
  - (2). Evidence admissible in general.
  - (3). Marriage and adultery.
- 61. — Prosecutions for offenses by husband or wife against the other.
  - (1). In general.
  - (2). Abandonment.
  - (3). Bigamy.
- 62. — Consent of husband or wife to admission of testimony by the other.
- 63. — Effect of invalidity of marriage.
- 64. — Effect of divorce.
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  - (2). Adultery.
- 65. — Effect of death of husband or wife.
- 66. Parent and child.
- 67. Attorney and client.
- 68. Judges, jurors, and officers acting at trial, as witnesses.
- 69. Judges, jurors, and judicial officers, as witnesses as to proceedings by or before them.
- 70. — In general.
- 71. — Judges, justices of the peace, and other magistrates.
- 72. — Grand jurors.
- 73. — Trial jurors.
- 74. — Commissioners, masters, referees, and arbitrators.
- 75. Objections to competency in general.
- 76. Waiver of objections to competency.
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  - (2). Effect of examining witness by party objecting.
  - (3). Husband and wife.

**II. COMPETENCY.(Cont'd)**

- 77. Examination of witness as to competency.
- 78. Evidence as to competency in general.
- 79. Determination as to competency, and effect of incompetency.
  - (1). In general.
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  - (3). Questions of law and fact.
  - (4). Review.

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- 80. Nature and grounds of incompetency in general.
- 81. Constitutional and statutory provisions.
- 82. Parties of record in civil actions and proceedings.
- 83. — In general.
- 84. — Nominal and unnecessary parties.
- 85. — Representative or official capacity.
- 86. — Witnesses for or against other parties.
- 87. Defendants in criminal prosecutions.
- 88. — In general.
- 89. — Separate trials of defendants jointly indicted.
- 90. — Separate indictments for same offense.
- 91. Interest of party or other person.
- 92. — In general.
- 94. — Interest of persons other than parties in general.
- 95. — Interest jointly with party.
- 96. — Interest separate or different from that of party.
- 97. — Liability on warranty or other liability over.
- 98. — Interest arising from particular obligations or transactions.
- 99. — Interest of member, stockholder, or officer of corporation party.
- 100. — Interest of agent, employee, or other representative.
- 101. — Liability for costs.
- 102. — Interest in criminal prosecution of person injured, prosecutor, informer, or detective or other officer.
- 103. — Interest in record as evidence in other proceedings.



**410. WITNESSES****II. COMPETENCY.(Cont'd)**

- 104. — Time and manner of acquiring interest.
- 105. — Balance of interest as between adverse parties.
- 106. Husband or wife of party or other person interested.
  - (1). In general.
  - (2). Criminal prosecutions.
- 107. Testimony for or against interest.
- 108. Testimony admissible notwithstanding interest.
- 109. — In general.
- 110. — Proof of preliminary and collateral matters.
- 111. — Proof as to damages after establishment of loss or injury and liability therefor.
- 112. Transfer, release, or extinguishment of interest.
- 113. Release or substitution of or indemnity against liability.
- 114. Determination of liability of codefendant by dismissal, default, or separate verdict or judgment.
- 115. Effect of statutory removal of incompetency in general.
  - 115.1. — In general.
- 116. — Civil actions and proceedings.
- 117. — Criminal prosecutions.
- 118. Effect of admission of testimony of adverse party.
- 119. Effect of calling or examination as witness by adverse party.
- 120. Consent of parties to testimony.
- 121. Objections to competency on ground of interest.
- 122. Waiver of objections.
- 123. Evidence as to interest.
- 124. Determination as to competency as affected by interest.

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- 125. Nature and grounds of exclusion in general.
- 126. Constitutional and statutory provisions.
- 127. Actions and proceedings in which testimony is excluded.
- 128. — In general.

**II. COMPETENCY.(Cont'd)**

- 129. — Representative or other capacity, or title or interest of party.
- 130. — Possibility of judgment for or against party in particular capacity or right.
- 131. — Probate or contest of will.
- 132. — Appointment or removal of executor, administrator, guardian, or trustee.
- 133. — Claim or demand against estate of decedent or incompetent person.
- 134. — Accounting of executor, administrator, guardian, or trustee.
- 135. — Determination of validity or construction of deed, will, or codicil.
- 136. — Determination of rights by descent or devolution from decedent.
- 137. Parties and other persons whose testimony is excluded.
- 138. — In general.
- 139. — Parties of record.
  - (1). In general.
  - (2). Who are parties.
  - (3). Parties not served and effect of default or dismissal.
  - (4). Effect of release, assignment, or withdrawal.
  - (5). Interest in general and nominal or unnecessary parties.
  - (6). Effect of disclaimer.
  - (7). Adverse interest.
  - (8). Party deriving title or interest from deceased in general.
  - (9). Legatee, devisee, heir, or distributee.
  - (10). Executor or administrator.
  - (11). Surviving spouse.
  - (12). Guardian or next friend.
  - (13). Trustee and beneficiary.
  - (14). Parties to bills and notes.
  - (15). Mortgagor and mortgagee.
  - (16). Partners.
- 140. — Persons interested in event.
  - (1). In general.
  - (2). Nature and extent of interest in general.
  - (3). Adverse interest.
  - (4). Relationship of witness to party or person interested.

**410. WITNESSES****II. COMPETENCY.(Cont'd)**

- (5). Interest in property in general.
- (6). Legatee or devisee.
- (7). Heir, distributee, or next of kin.
- (8). Executor or administrator.
- (9). Husband and wife.
- (10). Surviving spouse.
- (11). Guardian and ward.
- (12). Trustee and beneficiary.
- (13). Parties to bills and notes.
- (14). Principal and surety or guarantor.
- (15). Mortgagor and mortgagee.
- (16). Principal and agent or other representative.
- (17). Partners.
- (18). Creditors.
- (19). Transfer, release, or extinguishment of interest.
- 141. — Agent or other representative of party or person interested.
- 142. — Member, stockholder or officer of corporation or association party or interested.
- 143. — Grantor, assignor, or other person from whom party derives title or interest.
  - (1). In general.
  - (2). Grantor or vendor.
  - (3). Assignor.
  - (4). Transferrer of bill, note, or mortgage.
  - (5). Husband and wife.
- 144. — Surviving party to contract or other transaction or cause of action.
  - (1). In general.
  - (2). Parties of record and interest in event.
  - (3). Adverse party.
  - (4). Surviving party to contract.
  - (5). Parties to bills and notes.
  - (6). Grantor and grantee or vendor and vendee.
  - (7). Trustee and beneficiary.
  - (8). Donor and donee.
  - (9). Mortgagor and mortgagee and lessor and lessee.
  - (10). Executor, administrator, or heir.
  - (11). Surviving spouse.
  - (12). Principal and agent.

**II. COMPETENCY.(Cont'd)**

- (13). Member, stockholder, or officer of corporation.
- (14). Joint parties in general.
- (15). Surviving partners.
- 145. — Representative, survivor, or successor of person deceased or incompetent, as witness in behalf of estate represented or in his own interest.
- 146. — Husband or wife of party or other person excluded from testifying.
- 147. Parties as against whom testimony is excluded.
- 148. — In general.
- 149. — Executor, administrator, guardian, trustee, or other representative of estate of person deceased or incompetent.
  - (1). In general.
  - (2). Executor, administrator, or trustee.
- 150. — Grantee, assignee, devisee, legatee, heir, distributee, or other person deriving title or interest from deceased or incompetent person.
  - (1). In general.
  - (2). Grantee or assignee.
  - (3). Legatee, devisee, or heir.
  - (4). Widow.
  - (5). Creditors.
- 152. — Survivor of joint parties to contract or other transaction or cause of action.
- 153. — Party as to whom person deceased or incompetent acted in representative or fiduciary relation.
- 154. — Principal of agent deceased or incompetent.
- 155. — Parties to whom interest of witness is opposed.
- 156. — Parties themselves incompetent to testify.
- 157. Subject-matter of testimony.
- 158. — In general.
- 159. — Transactions or communications between witness and person subsequently deceased or incompetent.
  - (1). In general.
  - (2). Nature of testimony in general.

**410. WITNESSES****II. COMPETENCY.(Cont'd)**

- (3). What constitutes transaction in general.
- (4). Occupancy of land, and payment and collection of taxes or rent.
- (5). Delivery of deeds and property.
- (6). Demand, notice, and knowledge.
- (7). Gift.
- (8). Contracts in general.
- (9). Services and value thereof.
- (10). Supplies and value thereof.
- (11). Agency.
- (12). Partnership transactions.
- (13). Payment or transmission of money.
- (14). Physical condition and mental capacity.
- 160. — Transactions or communications between person other than witness and person subsequently deceased or incompetent.
  - (1). In general.
  - (2). Interest of or participation by witness or his agent.
- 161. — Transactions or communications between witness and other person in presence of person subsequently deceased or incompetent.
- 162. — Transactions or communications between witness and agent competent to testify.
- 163. — Admissions or other statements by person subsequently deceased or incompetent.
- 164. — Communications or instruments in writing.
  - (1). In general.
  - (2). Lost instruments.
  - (3). Proof of handwriting.
  - (4). Letters and contents thereof.
  - (5). Bonds and assignment thereof.
  - (6). Bills and notes in general.
  - (7). Consideration of bill or note.
  - (8). Indorsement of bill or note.
  - (9). Deeds.
  - (10). Mortgages and assignment thereof.
  - (11). Execution and contents of will.
- 165. — Statements and books of account.

**II. COMPETENCY.(Cont'd)**

- 166. — Matters equally within knowledge of witness and person subsequently deceased or incompetent.
- 167. — Matters occurring before death or incompetency of party to contract or other transaction or cause of action.
- 168. — Matters occurring after death or incompetency of party to contract or other transaction or cause of action.
- 170. Nature and effect of testimony.
- 171. — In general.
- 172. — For or on behalf of witness himself or of his successor in title or interest.
- 173. — For or on behalf of coparty.
- 174. — For or against adverse party.
- 175. Effect of admission or availability of evidence on behalf of adverse party in general.
  - (1). In general.
  - (2). Effect of admission of deposition of person subsequently deceased or incompetent.
  - (3). Interest of witness.
- 176. Effect of admission of testimony of adverse party.
  - (1). In general.
  - (2). Transactions or communications with deceased.
  - (3). Scope of testimony in general.
  - (4). Testimony of assignor or of surviving party to contract or thing in action or person succeeding to rights of deceased.
- 177. Rebuttal of evidence on behalf of adverse party.
- 178. Effect of calling or examination as witness by adverse party.
  - (1). In general.
  - (2). Testimony given at instance of party desiring to testify.
  - (3). Cross-examination by adverse party after direct examination.
  - (4). Taking or introduction in evidence by adverse party of deposition or testimony at former hearing.
- 180. Objections to admissibility.
- 181. Waiver of objections.

**410. WITNESSES****II. COMPETENCY.(Cont'd)**

- 182. Evidence as to nature and circumstances of transaction, communication, or other subject-matter.
- 183. Determination as to admissibility.
- 183.5. Weight of testimony admitted and corroboration.

**(D) CONFIDENTIAL RELATIONS AND PRIVILEGED COMMUNICATIONS (OBSOLETE, SEE PRIVILEGED COMMUNICATIONS AND CONFIDENTIALITY).****III. EXAMINATION.****(A) TAKING TESTIMONY IN GENERAL.**

- 224. Order, course, and extent of examination.
- 225. Control of court in general.
- 226. Discretion of court.
- 227. Oath or affirmation.
- 228. Mode of testifying in general.
- 229. Deaf or mute witnesses.
- 230. Witnesses ignorant of language, and interpreters.
- 231. Testimony in foreign language.
- 232. Testimony of party in civil case on his own behalf.
- 233. Testimony of accused in criminal prosecution.
- 234. Examination of adverse party in general.
- 235. Statement by witness or testimony without questions.
- 236. Questions in general.
  - (1). In general.
  - (2). Preliminary questions.
  - (3). Interruption of testimony by questions.
  - (4). Indefinite and general questions.
  - (5). Question as affected by objectionable answer.
  - (6). Questions objectionable in part.
  - (7). Questions calling for answers not based on personal knowledge.
- 237. Questions assuming facts.
  - (1). In general.
  - (2). Facts not disputed.
  - (3). Facts not proved.
  - (4). Facts in issue.
- 239. Leading questions.
- 240. — In general.
  - (1). In general; right to use.

**III. EXAMINATION.(Cont'd)**

- (2). Discretion of court.
- (3). What are leading questions in general.
- (4). Specific questions in general.
- (5). Questions as to statements or suggestions previously made by witness.
- (6). Questions as to statements or directions by or conversations between other persons.
- (7). Materiality of questions.
- (8). Questions involving conclusions or matters of opinion.
- (9). Questions in the alternative.
- 241. — Preliminary or introductory questions.
- 242. — Suggestions in aid of recollection.
- 243. — Ability of witness to communicate.
- 244. — Unwilling or hostile witnesses.
- 245. Repetition of questions.
- 246. Examination by court or jury.
  - (1). In general.
  - (2). Calling and examination by court.
  - (3). Leading questions.
  - (4). Repetition of questions by court.
  - (5). Recalling witness for examination.
- 247. Answers in general.
- 248. Responsiveness of answer.
  - (1). In general.
  - (2). Particular answers.
  - (3). Answers responsive in part.
- 249. Remarks by witness.
- 250. Impressions of witness.
- 251. Reasons for knowledge or recollection of witness.
- 252. Use of documents, maps, plats, diagrams, or other matters to explain testimony.
- 253. Refreshing memory.
- 253.1. — In general.
- 254. — Grounds and purposes in general.
- 255. — Memoranda or other writings which may be used.
  - (1). In general.
  - (2). Memoranda made by or in the presence of witness.
    - (2.1). — In general.
  - (3). — Time of making memoranda.

**410. WITNESSES****III. EXAMINATION.**(Cont'd)

- (4). Memoranda made by another.
- (5). Copies of or extracts from records or memoranda.
- (6). Papers in legal proceedings.
- (7). Books of account and entries therein.
- (8). Records.
- (9). Testimony previously given by witness.
- (10). Testifying from memory after refreshing memory.
- (11). Time of making memoranda.
- 256. — Inspection of writing by adverse party.
- 257. — Admissibility of writing as evidence.
- 257.10. — Testimony refreshed by hypnosis or drugs.
- 258. Testimony from memoranda or other writings.
- 259. Testimony of stenographer from notes.
- 260. Calling attention to and explanation of former statements or testimony.
- 261. Recalling witnesses.
- 262. — In general.
- 263. — Explanation, correction, or restatement of former testimony.
- 264. — Examination as to new matter.
- 265. Examination after use of deposition.

**(B) CROSS-EXAMINATION.**

- 266. Right to cross-examine and re-examine in general.
- 266.5. Effect of cross-examination or testimony.
- 267. Control and discretion of court.
- 268. Scope and extent of cross-examination in general.
  - (1). In general.
  - (2). Knowledge or source of information.
  - (3). Drawing out whole of transaction or conversation.
  - (4). Time of occurrence or condition.
  - (5). Truth of direct testimony.
  - (6). Facts inconsistent with testimony.
  - (7). Conduct inconsistent with testimony.

**III. EXAMINATION.**(Cont'd)

- (8). Statements and affidavits by witness or others.
- (9). Conversations between witness and others.
- (10). Particular facts included in general statement by witness.
- (11). Cross-examination of voluntary statements by witness.
- (12). Sale, consideration and related circumstances.
- (13). Value of property.
- (14). Consideration for note.
- (15). Ownership or interest in property.
- (16). Reasons for action testified to by witness.
- (17). Witness's identity, address, etc.; matters endangering witness.
- 269. Limitation of cross-examination to subjects of direct examination.
  - (1). In general.
  - (2). Limitation as to particular subjects of inquiry.
    - (2.1). — In general.
  - (3). — Time of occurrence or condition.
  - (4). — Prior conversations or statements.
  - (5). — Testimony at preliminary examination or former trial.
  - (6). — Cause of accident or injury, and precautions against.
  - (7). — Threats, preparation, or previous attempts or difficulties.
  - (8). — Conduct of business or occupation.
  - (9). — Management and operation of machinery, railroad, or other conveyance.
  - (10). — Quantity, quality, value, or cost.
  - (11). — Ownership or interest in property.
  - (12). — Bodily health, physical condition, mental condition, or intoxication.
  - (13). — Personal and domestic relations.
  - (14). — Character of deceased.

**410. WITNESSES****III. EXAMINATION.**(Cont'd)

- (15). Introduction of matters in defense or rebuttal in general.
- 270. Cross-examination as to irrelevant, collateral, or immaterial matters.
  - (1). In general.
  - (2). Particular matters as subjects of cross-examination.
  - (3). Cross-examination as to immaterial testimony in chief.
- 271. Cross-examination as to writings.
  - (1). In general.
  - (2). Necessity for production of writing.
  - (3). Admissibility of writing.
  - (4). Manner of conducting cross-examination.
- 272. Admissibility on cross-examination of writing used on direct examination.
- 273. Cross-examination of witness charged with fraud.
- 274. Cross-examination of witness to character of party.
  - (1). In general.
  - (2). Questions as to particular reports heard by witness.
- 275. Cross-examination of party in general.
  - (1). In general.
  - (2). Particular subjects of inquiry.
  - (2.1). — In general.
  - (3). — Facts inconsistent with testimony.
  - (4). — Fraud.
  - (5). — Limitation to subjects of direct inquiry.
  - (6). — Irrelevant, collateral, or immaterial matters.
  - (7). — Writings.
  - (8). Cross-examination of party or employee examined as a witness by adverse party.
- 276. Examination of adverse party or witness as on cross-examination.
- 277. Cross-examination of accused in criminal prosecutions.
  - (1). In general.
  - (2). Particular subjects of inquiry.
  - (2.1). — In general.
  - (3). — Facts inconsistent with testimony.

**III. EXAMINATION.**(Cont'd)

- (4). — Limitation to subjects of direct examination.
- (5). — Irrelevant, collateral, or immaterial matters.
- (6). — Writings.
- (7). Recalling for further cross-examination.
- 278. Cross-examination of accomplices and codefendants in criminal prosecutions.
- 279. Questions on cross-examination.
- 280. — In general.
- 281. — Questions assuming facts.
- 282. — Leading questions.
- 282.5. — Repetition of questions and questions calling for repetition of answers.
- 282.9. — Cross-examination by court.
- 283. Recalling witness for cross-examination.
- 284. Effect of refusal to submit to cross-examination.

**(C) RE-EXAMINATION.**

- 285. Redirect examination.
- 285.1. — In general.
- 286. — Scope and extent.
  - (1). In general.
  - (2). Discretion of court.
  - (3). Leading questions.
  - (4). Scope and extent in general.
  - (5). Introduction of writings in evidence.
  - (6). Examination as to writings.
- 287. — Explanation of testimony on cross-examination.
  - (1). In general.
  - (2). Discretion of court.
  - (3). Motives or reasons for acts or statements detailed on cross-examination.
  - (4). Drawing out whole of transaction or conversation in general.
- 288. — New matter on cross-examination.
  - (1). In general.
  - (2). Particular subjects of inquiry.
- 289. — Irrelevant, collateral, or immaterial matters.
- 290. — Repetition of testimony on direct or cross-examination.
- 291. Recross-examination.

**410. WITNESSES****(D) PRIVILEGE OF WITNESS.**

- 292. Nature and grounds of privilege to refuse to answer in general.
- 293. Constitutional and statutory provisions.
- 293.5. Proceedings to which privilege applies.
- 294. Answer tending to subject witness to civil action or pecuniary loss.
- 295. Answer tending to subject witness to penalty or forfeiture.
- 296. Answer tending to disgrace witness or render him infamous.
- 297. Self-incrimination.
  - (1). In general.
  - (2). Direct, indirect or partial disclosure.
  - (3). Motive for claiming privilege; protection of others.
  - (4). Form and purpose of inquiry.
  - (4.1). — In general.
  - (5). — Cross-examination and impeachment.
  - (6). — Grand jury investigation.
  - (7). — Legislative or official investigation.
  - (8). Particular subjects of inquiry.
  - (8.1). — In general.
  - (9). — Fraud or perjury.
  - (10). — Gaming, sex and liquor.
  - (11). — Government and officers, offenses involving.
  - (12). — Personal identity and associations.
  - (13). Particular circumstances affecting danger of prosecution.
  - (13.1). — In general.
  - (14). — Prosecution in different jurisdiction.
- 298. Privilege as to production of documents.
- 298.5. Privilege as to physical examination.
- 299. Privilege of accused in criminal prosecution.
- 300. — In general.
- 301. — Cross-examination.
- 302. Caution to witness.
- 303. Effect of release or discharge from liability.
- 304. Effect of statutory protection of witness from use of evidence against himself.
  - (1). In general.

**III. EXAMINATION.(Cont'd)**

- (2). Constitutionality of provisions in general.
- (3). Sufficiency of statutory protection.
- (4). Persons entitled to immunity.
- 305. Waiver of privilege.
  - (1). In general.
  - (2). Waiver by accused in criminal prosecutions.
- 306. Persons entitled to claim privilege.
- 307. Claim of privilege.
- 308. Determination of right to privilege.
- 309. Effect of refusal to answer.
- 310. Remedies for protection of witness against subsequent use of evidence.

**IV. CREDIBILITY AND IMPEACHMENT.****(A) IN GENERAL.**

- 311. Grounds of credibility in general.
- 312. Means of knowledge of witness.
- 313. Recollection of witness.
- 315. Manner of testifying.
- 316. Effect of mistaken or inaccurate testimony.
- 317. Falsus in uno, falsus in omnibus.
  - (1). In general.
  - (2). Willfulness or mistake.
  - (3). Materiality of false testimony.
  - (4). Contradiction or corroboration on other points.
- 318. Corroboration of unimpeached and contradicted witness.
- 319. Right to impeach witness in general.
- 320. Right to impeach one's own witness.
- 321. — In general.
- 322. — Witness whom party is compelled to call.
- 323. — Witness hostile to party calling him.
- 324. — Party called as witness by adversary.
- 325. — Witness cross-examined as to matter not subject of direct examination.
- 326. Right to impeach impeaching witness.
- 327. Impeachment of capacity of witness.
- 328. Impeachment of knowledge or recollection of witness.
- 329. Cross-examination to test reliability of witness.

**410. WITNESSES****IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)**

330. Cross-examination to discredit witness or disparage testimony in general.
- (1). In general.
  - (2). Inquiry as to conversation between witness and other person relative to facts.
  - (3). Personal affairs, acts, and transactions of witness not pertaining to issues.
331. Effect of refusal to answer on cross-examination.
- 331.5. Competency of impeaching evidence in general.  
*Excludes expert opinion evidence, see CRIMINAL LAW §474.3.*
332. Recalling witness for purpose of impeachment.

**(B) CHARACTER AND CONDUCT OF WITNESS.**

333. Character as ground of impeachment in general.
334. Witnesses who may be impeached as to character.
335. — In general.
336. — Party as witness in civil action or proceeding.
337. — Accused as witness in criminal prosecution.
- (.5). In general.
  - (1). Right to impeach.
  - (2). Character and reputation in general.
  - (3). Reputation as to veracity.
  - (4). Particular acts or facts.
  - (5). Former accusation or conviction of crime.

*Excludes whether adjudication is a criminal conviction and effect on conviction of subsequent events, see §345(5–11), extent of cross-examination concerning conviction, see §350, and competency of evidence offered to prove conviction, see §359.*

- (7). — In general.
- (8). — Discretion.
- (9). — Felonies or misdemeanors; ordinance violations.
- (10). — Extent of punishment.
- (11). — Moral turpitude; infamous crimes.
- (12). — Relationship to honesty; crimen falsi.

**IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)**

- (13). — Offenses committed in other jurisdictions.
  - (14). — Particular offenses.
  - (15). — Fraud or forgery.
  - (16). — Larceny or shoplifting.
  - (17). — Receiving or possessing stolen goods.
  - (18). — Perjury or bribery.
  - (19). — Burglary or robbery.
  - (20). — Assault and battery; homicide.
  - (21). — Drug related offenses.
  - (22). — Sex offenses.
  - (23). — Motor vehicle offenses.
  - (24). — Weapons offenses.
  - (25). — Prejudice or unfairness; balancing probative value.
  - (26). — Effect on defendant's decision to testify.
  - (27). — Similarity to charged offense.
  - (28). — Time of prior conviction; remoteness.
  - (29). — Admission or denial of conviction.
  - (30). — Extent of showing; number of offenses.
  - (31). — Determination; hearing and findings.
  - (32). — Evidence.
338. Character and reputation in general.
339. Particular traits of character or habits.
340. — In general.
- (1). In general.
  - (2). Religious faith or moral sense.
  - (3). Unchastity.
341. — Relevancy to issues.
342. Reputation as to veracity.
343. Place and time of acquiring reputation.
344. Particular acts or facts.
- (1). In general.
  - (2). Immoral or unlawful acts or conduct in general.
  - (3). Violation of marriage obligations.
  - (4). Business or occupation.
  - (5). Fraud or dishonesty.
345. Accusation or conviction of crime.
- (1). In general.



**410. WITNESSES****IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)**

- (2). Particular offenses.
- (3). Confinement in reformatory.
- (4). Conviction, acquittal, and pardon.
- (5). — In general.
- (6). — Pleas of guilty or nolo contendere.
- (7). — Arrest or charge without conviction.
- (8). — Pardon, parole, probation, expungement or suspension of sentence.
- (9). — Juvenile, youthful offender or military adjudications.
- (10). — Pendency or possibility of appeal; posttrial motions.
- (11). — Validity of conviction; reversal or setting aside.
- 346. Conduct of witness with reference to cause.
- 347. Conduct of witness inconsistent with testimony; silence.
- 348. Cross-examination for purpose of impeachment.
- 349. — In general.
- 350. — Accusation or conviction of crime.
- 351. Laying foundation for impeaching evidence.
- 352. Competency of impeaching evidence in general.
- 353. Competency of impeaching witnesses as to character or reputation.
- 354. — In general.
- 355. — Knowledge or means of knowledge of impeaching witness.
- 356. Examination of impeaching witnesses as to character or reputation.
- 356.1. — In general.
- 357. — Direct examination.
- 358. — Cross-examination and re-examination.
- 359. Evidence of accusation or conviction of crime.
- 360. Rebuttal of evidence impeaching character.
- 361. Evidence to sustain character of witness impeached.
  - (1). In general.
  - (2). Of witness accused or convicted of crime.

**IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)**

- (3). Contradiction of record of conviction.
- (4). Competency of sustaining witnesses.
- 362. Effect of impeachment of character.
- (C) INTEREST AND BIAS OF WITNESS.**
- 363. Interest as ground of impeachment in general.
  - (1). In general.
  - (2). Showing interest or bias of one's own witness.
- 364. Interest of party of record in civil action or proceeding.
- 365. Interest of defendant in criminal prosecution.
- 366. Interest of accomplice or codefendant in criminal prosecution.
- 367. Interest in event of witness not party to record.
  - (1). In general.
  - (2). Assisting party in conduct of action or prosecution.
  - (3). Detectives and others employed to testify or procure evidence.
- 368. Relationship to party.
- 369. Employment by or other contractual relation with party.
- 370. Friendly or unfriendly relations with or feeling toward party.
  - (1). In general.
  - (2). Relations with or feelings toward family, relatives, or attorney of party.
  - (3). Instigation or maintenance of prosecution or litigation.
  - (4). Sexual relations.
  - (5). Business relations or competition.
  - (6). Relations with or feelings toward person killed by defendant in prosecution for homicide.
- 371. Bias or prejudice of impeaching witness toward witness impeached.
- 372. Cross-examination to show interest or bias.
  - (1). In general.
  - (2). Inquiry as to particular acts or facts tending to show interest or bias.

**410. WITNESSES****IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)**

- (3). Conclusiveness of answers on cross-examination.
- 373. Laying foundation for impeaching evidence.
- 374. Competency of impeaching evidence.
  - (1). In general.
  - (2). Declarations, statements, or admissions of witness.
- 375. Examination of impeaching witnesses.
- 376. Rebuttal of evidence of interest or bias.
- 377. Evidence to show want of interest or freedom from bias.
- 378. Effect of impeachment for interest or bias.
- (D) INCONSISTENT STATEMENTS BY WITNESS.**
- 379. Inconsistency of statements as ground of impeachment in general.
  - (1). In general.
  - (2). Nature of statement in general.
  - (3). Statements of conclusions or opinions.
  - (4). Written statements or instruments.
    - (4.1). — In general.
  - (5). — Letters.
  - (6). — Official documents, records and proceedings.
  - (7). — Judicial records and proceedings.
  - (8). Former testimony of witness.
    - (8.1). — In general.
  - (9). — Testimony before grand jury or at preliminary investigation or coroner's inquest.
  - (10). — Depositions and interrogatories.
  - (11). Time of making statements and circumstances connected therewith.
  - (12). Statements by third persons in presence of witness.
- 380. Witnesses who may be impeached by inconsistent statements.
  - (1). In general.
  - (2). Accused in criminal prosecution.
  - (3). Impeachment of testimony of deceased or absent witness.

**IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)**

- (4). Stipulation as to testimony of absent witness.
- (5). Inconsistent statements of one's own witness.
  - (5.1). — In general.
- (6). — Party called as witness by adversary.
- (7). — Witness whom party is compelled to call.
- (8). — Cross-examination as to matter not subject of direct examination.
- (9). — Witness for both parties.
- 381. Testimony subject to impeachment.
- 382. — In general.
- 383. — Irrelevant, collateral, or immaterial matters.
- 384. — Conclusions and matters of opinion.
- 386. Nature and extent of inconsistency.
- 387. Cross-examination as to inconsistent statements.
- 388. Laying foundation for proof of inconsistent statements.
  - (1). In general.
  - (2). Necessity of laying foundation.
    - (2.1). — In general.
  - (3). — Party as witness.
  - (4). — Impeachment of one's own witness.
  - (5). Scope of cross-examination for purpose of laying foundation.
  - (6). Foundation for impeachment of deposition, affidavit, or other written testimony.
  - (7). Foundation for impeachment by written statements.
    - (7.1). — In general.
  - (8). — Depositions or minutes of testimony at former trial or hearing.
  - (9). Certainty and definiteness of inquiry.
    - (9.1). — In general.
  - (10). — Time, place, circumstances, and person to whom statements were made.
- 389. Admission or denial by witness of making of inconsistent statements.

**411. WOODS AND FORESTS****IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)**

- 390. Competency of evidence of inconsistent statements in general.
- 390.1. — In general.
- 391. — Oral statements, and examination of impeaching witnesses.
- 392. — Written statements or instruments.
  - (1). In general.
  - (2). Portion of writing.
- 393. — Former testimony of witness.
  - (1). In general.
  - (2). Stenographer's notes or transcript.
  - (3). Testimony before grand jury or at preliminary investigation or coroner's inquest.
  - (4). Depositions.
  - (5). Bills of exceptions.
  - (6). Portion of writing or testimony.
- 394. Rebuttal of evidence of inconsistent statements.
- 395. Evidence as to statements consistent with testimony.
- 396. Explanation of inconsistency.
  - (1). In general.
  - (2). Right to show whole statement.
  - (3). Right of impeached witness to give version of statement.
- 397. Effect of impeachment by inconsistent statements.

**(E) CONTRADICTION.**

- 398. Right to contradict testimony in general.
  - (1). In general.
  - (2). Laying foundation for contradiction.
  - (3). Right of cross-examiner to contradict answers elicited on cross-examination.
- 399. Right to contradict testimony of one's own witness.
- 400. — In general.
  - (1). In general.
  - (2). Party called as witness by adversary.
- 401. — Witness cross-examined as to matter not subject of direct examination.
- 402. — Disproving facts testified to by witness.
- 403. Testimony subject to contradiction.
- 404. — In general.

**IV. CREDIBILITY AND IMPEACHMENT.(Cont'd)**

- 405. — Irrelevant, collateral, or immaterial matters.
  - (1). In general.
  - (2). Party to civil action or accused in criminal prosecution.
- 406. Competency of contradictory evidence.
- 407. Rebuttal of contradictory evidence.
- 408. Explanation of contradiction.
- 409. Effect of contradiction.

**(F) CORROBORATION.**

- 410. Right to corroborate impeached or contradicted witness.
- 411. Testimony subject to corroboration.
- 412. — In general.
- 413. — Irrelevant, collateral, or immaterial matters.
- 414. Competency of corroborative evidence.
  - (1). In general.
  - (2). Former statements corresponding with testimony.
- 415. Rebuttal of corroborative evidence.
- 416. Effect of corroboration.

**411. WOODS AND FORESTS****SUBJECTS INCLUDED**

- Trees not grown for their fruit or other annual products
- Protection and promotion of the growth of such trees and of forests
- Nature and incidents of rights of property in growing trees in general

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Agriculture, promotion in general, see AGRICULTURE
- Logs and timber, trees considered as, and transfer of timber lands or of timber ready for logging, see LOGS AND LOGGING
- Particular estates in land, rights and liabilities incident to, see LIFE ESTATES, REMAINDERS and other specific topics

**411. WOODS AND FORESTS**

- Public lands, trees on, see PUBLIC LANDS
- Specific remedies for cutting down or injuring trees, see TRESPASS, WASTE
- Wilderness areas, see ENVIRONMENTAL LAW
1. Nature of property.
  2. Ownership in general.
  4. Effect of sale or conveyance of land.
  5. Power to protect and regulate.
  6. Statutory provisions.
  7. Forest commissions and other officers.
  8. Forest reservations, preserves, or parks.  
*Excludes wilderness areas, see ENVIRONMENTAL LAW ¶44.*
  10. Offenses.
  11. Penalties for violations of regulations.
  12. Criminal prosecutions.

**413. WORKERS' COMPENSATION****SUBJECTS INCLUDED**

- Compensation provided by Workers' Compensation Acts, for injury to or death of employees arising out of and in course of their employments
- Persons and employments within such acts
- Persons entitled to, and liable for, compensation
- Compensability of injuries and compensation payable
- Public funds for payment of compensation and contributions thereto
- Workers' compensation insurance or self-insurance
- Administrative boards, commissions, and officers
- Proceedings to secure compensation and review thereof
- Payment of compensation, and assignment or transfer of rights
- Acceptance or rejection of such acts and effect of acts on other rights and liabilities

**SUBJECTS EXCLUDED AND COVERED BY OTHER TOPICS**

- Admiralty, jurisdiction and procedure, see ADMIRALTY
- Black lung benefits, see LABOR AND EMPLOYMENT
- Disability benefits, see LABOR AND EMPLOYMENT, and MUNICIPAL CORPORATIONS and other government topics for public employment benefits
- Employer-employee relation generally, and liability and damages recoverable in ordinary civil actions for injuries to employees, see LABOR AND EMPLOYMENT, DAMAGES
- Employers' liability insurance, see INSURANCE
- Interstate commerce, applicability of state laws to persons engaged in, see COMMERCE
- Unemployment compensation, see UNEMPLOYMENT COMPENSATION

- I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY, ¶1-73.
- II. WHAT LAW GOVERNS, ¶74-100.
- III. EMPLOYMENTS INCLUDED, ¶101-185.
  - (A) IN GENERAL, ¶101-113.
  - (B) PARTICULAR EMPLOYMENTS, ¶114-185.
- IV. EMPLOYERS WITHIN ACTS, ¶186-229.
  - (A) IN GENERAL, ¶186-194.
  - (B) PARTICULAR EMPLOYERS, ¶195-229.
- V. EMPLOYEES WITHIN ACTS, ¶230-390.
  - (A) IN GENERAL, ¶230-251.
  - (B) PARTICULAR CLASSES OF PERSONS IN GENERAL, ¶252-262.
  - (C) CASUAL EMPLOYEES AND EMPLOYMENT IN TRADE OR BUSINESS OF EMPLOYER, ¶263-294.
    1. CASUAL EMPLOYEES IN GENERAL, ¶263-277.
    2. EMPLOYMENT IN TRADE OR BUSINESS OF EMPLOYER, ¶278-294.
  - (D) PARTNERS AND JOINT VENTURERS, ¶295-296.
  - (E) CORPORATE OFFICERS AND STOCKHOLDERS, ¶297-303.

**413. WORKERS' COMPENSATION**

- V. EMPLOYEES WITHIN ACTS—Cont'd
  - (F) INDEPENDENT CONTRACTORS, ☞304-343.
  - (G) EMPLOYEES OF CONTRACTOR OR SUBCONTRACTOR, ☞344-361.
  - (H) CHILDREN OR MINORS, ☞362-373.
  - (I) PUBLIC OFFICERS AND EMPLOYEES, ☞374-390.
- VI. ACCEPTANCE OR ELECTION TO COME UNDER ACT, ☞391-409.
- VII. COMPENSATION ON DEATH OF EMPLOYEE, ☞410.1-510.
  - (A) PERSONS ENTITLED TO BENEFITS, ☞410.1-449.
    - 1. IN GENERAL, ☞410.1-419.
    - 2. PERSONS IN PARTICULAR RELATIONSHIPS TO EMPLOYEE, ☞420.1-429.
    - 3. CONFLICTING CLAIMS, PRIORITIES, AND APPORTIONMENT, ☞430.1-439.
    - 4. EFFECT OF DEATH, MARRIAGE, COMING OF AGE, CESSATION OF DEPENDENCY, OR OTHER CHANGE OF CONDITION OF PERSON ENTITLED, ☞440.1-449.
  - (B) DEATH BENEFITS, ☞450.1-459.
  - (C) DISABILITY COMPENSATION, ☞460.1-510.
- VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD, ☞511-800.
  - (A) NATURE AND CHARACTER OF PHYSICAL HARM, ☞511-596.
    - 1. IN GENERAL, ☞511-520.
    - 2. DISEASES, INFECTIONS, AND POISONING, ☞521-546.
    - 3. OCCUPATIONAL DISEASES, ☞547-551.
    - 4. AGGRAVATION OF PREVIOUSLY IMPAIRED CONDITION, ☞552-566.
    - 5. PARTICULAR INJURIES AND CONSEQUENCES, ☞567-596.
  - (B) REMOTE AND PROXIMATE CONSEQUENCES, ☞597-603.
  - (C) INJURIES ARISING OUT OF AND IN COURSE OF EMPLOYMENT IN GENERAL, ☞604-618.
  - (D) PARTICULAR CAUSES, CIRCUMSTANCES, AND CONDITIONS OF INJURY, ☞619-770.
    - 1. IN GENERAL, ☞619-625.

- VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD—Cont'd
  - (D) PARTICULAR CAUSES, CIRCUMSTANCES, AND CONDITIONS OF INJURY—Cont'd
    - 2. ACTS DONE UNDER DIRECTION OR PERMISSION, OR IN EMERGENCY, ☞626-627.
    - 3. NEGLIGENT, UNREASONABLE, OR VOLUNTARY ACTS, AND INCURRENCE OF RISK, ☞628-631.
    - 4. INJURIES BY ELECTRICITY, EXPLOSIONS, OR BURNS, ☞632-634.
    - 5. INJURIES FROM OPERATION, CARE, OR REPAIR OF VEHICLES, ELEVATORS OR HOISTING APPARATUS, ☞635-636.
    - 6. INJURIES BY ELEMENTS OR ACT OF GOD, ☞637-642.
    - 7. STREET ACCIDENTS IN GENERAL, ☞643-648.
    - 8. SLIPPING, TRIPPING, OR FALLS, ☞649-651.
    - 9. ACTS FOR PERSONAL COMFORT OR CONVENIENCE OF EMPLOYEE, ☞652-660.
    - 10. ACTS FOR BENEFIT OF EMPLOYER AND EMPLOYEE, ☞661-664.
    - 11. ACTS FOR INDIVIDUAL PURPOSES OR BENEFIT OF EMPLOYEE, ☞665-668.
    - 12. ACTS FOR BENEFIT OF CO-EMPLOYEE OR THIRD PERSON, ☞669-670.
    - 13. HORSEPLAY AND PRACTICAL JOKING, ☞671-677.
    - 14. INJURIES BY ACTS OF CO-EMPLOYEE OR OF THIRD PERSON, ☞678-697.
    - 15. ACCIDENTAL SHOOTING, ☞698-703.
    - 16. INJURIES BEFORE OR AFTER WORKING HOURS OR BEFORE ENTERING ON OR AFTER LEAVING EMPLOYMENT, ☞704-709.
    - 17. PLACE OF INJURY WITH REFERENCE TO PLANT OR PREMISES OF EMPLOYER, ☞710-718.
    - 18. INJURIES WHILE GOING TO OR FROM WORK, ☞719-757.
    - 19. INJURIES WHILE GOING TO OR FROM MEALS; GOING FOR PAY; GOING TO PUNCH

**413. WORKERS' COMPENSATION**

- VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD—Cont'd
- (D) PARTICULAR CAUSES, CIRCUMSTANCES, AND CONDITIONS OF INJURY—Cont'd
- TIME CLOCK; AND SIMILAR ACTS, ☞758–763.
20. INTERVALS OR TEMPORARY CESSATION OF WORK; EMPLOYEE AWAY FROM WORKING PLACE, ☞764–770.
- (E) DEFENSES AGAINST CLAIMS FOR COMPENSATION; MISCONDUCT OF EMPLOYEE, ☞771–800.
- IX. AMOUNT AND PERIOD OF COMPENSATION, ☞801–1002.
- (A) BASIS FOR DETERMINATION OF AMOUNT, ☞801–835.5.
- (B) DISABILITY BENEFITS, ☞836–884.
1. IN GENERAL, ☞836–839.2.
2. TEMPORARY OR PERMANENT DISABILITY IN GENERAL, ☞840.1–849.
3. TOTAL OR PARTIAL DISABILITY IN GENERAL, ☞850.1–859.
4. SUPPLEMENTAL AND IMPAIRED EARNING BENEFITS, ☞860.1–864.
5. PREVIOUS IMPAIRMENT OR MULTIPLE INJURIES; APPORTIONMENT, ☞865.1–869.
6. MAXIMUM MEDICAL IMPROVEMENT; MULTIPLE AWARDS, ☞870.1–874.
7. LIMITATIONS ON AMOUNT; EXTENDED BENEFITS, ☞875.1–879.
8. EMPLOYMENT AND EARNING CAPACITY, ☞880.1–884.
- (C) SCHEDULED AND OTHER PARTICULAR INJURIES, ☞885.1–889.
- (D) OTHER BENEFITS, ☞890.1–907.
1. PAIN AND SUFFERING, ☞890.1–894.
2. DISFIGUREMENT, ☞895.1–899.
3. REHABILITATION AND RE-TRAINING COMPENSATION, ☞900.1–907.
- (E) COMPENSATION FOR DEATH, ☞908–933.
1. IN GENERAL, ☞908–931.
2. PERIOD OF COMPENSATION, ☞932–933.
- (F) DEDUCTIONS AND OFFSETS, ☞934.1–937.
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- IX. AMOUNT AND PERIOD OF COMPENSATION—Cont'd
- (G) INCREASE OR REDUCTION OF COMPENSATION—Cont'd
1. MISCONDUCT IN GENERAL (PRIOR TO INJURY), ☞938–945.
2. MINIMIZING OR AGGRAVATING INJURY (SUBSEQUENT TO INJURY), ☞946–960.
- (H) MEDICAL OR OTHER EXPENSES, ☞961–1002.
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2. PROCEEDINGS FOR ALLOWANCE OR RECOVERY, ☞992–1002.
- X. PAYMENT OF COMPENSATION AND COMPLIANCE WITH AWARD, ☞1003–1044.
- (A) MODE OF PAYMENT OR COMPLIANCE IN GENERAL, ☞1003–1004.
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- (B) PUBLIC FUNDS, ☞1048–1057.5.
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- (D) PRIVATE INSURANCE, ☞1061–1075.
- XII. ADMINISTRATIVE OFFICERS AND BOARDS, ☞1076–1096.10.
- XIII. ASSIGNMENT OR TRANSFER OF RIGHTS, ☞1097–1099.
- XIV. WAIVER AND ESTOPPEL AS TO RIGHT TO CLAIM OR TO DENY LIABILITY FOR COMPENSATION, ☞1100–1114.
- XV. AGREEMENTS AS TO COMPENSATION; COMPROMISE, SETTLEMENT, AND RELEASE, ☞1115–1162.
- (A) REQUISITES AND VALIDITY, ☞1115–1126.

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## XV. AGREEMENTS AS TO COMPENSATION; COMPROMISE, SETTLEMENT, AND RELEASE—Cont'd

## (B) CONSTRUCTION, OPERATION, AND ENFORCEMENT, ¶1127–1141.

## (C) REVIEW, MODIFICATION, AND CANCELLATION, ¶1142–1162.

## XVI. PROCEEDINGS TO SECURE COMPENSATION, ¶1163–1989.

## (A) IN GENERAL, ¶1163–1187.

## (B) VENUE, ¶1188.

## (C) PARTIES, ¶1189–1198.

## (D) TIME FOR INSTITUTION OF PROCEEDINGS, AND LIMITATIONS, ¶1199.1–1215.

## 1. IN GENERAL, ¶1199.1–1199.4.

## 2. COMPUTATION, TOLLING, AND ACCRUAL, ¶1199.5–1199.29.

## 3. WAIVER AND ESTOPPEL, ¶1199.30–1215.

## (E) NOTICE OF ACCIDENT OR INJURY, ¶1216–1256.

## 1. IN GENERAL, ¶1216–1231.

## 2. EXCUSING WANT OF, OR DEFECT IN, NOTICE, ¶1232–1256.

## (F) CLAIMS FOR COMPENSATION, ¶1257–1304.

## 1. IN GENERAL, ¶1257–1261.5.

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## (G) MEDICAL EXAMINATION, ¶1305–1315.

## (H) ALTERNATIVE DISPUTE RESOLUTION, ¶1316.1–1317.

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## (J) ANSWER OR NOTICE OF DEFENSE, ¶1327–1333.

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## 2. EMPLOYMENTS WITHIN ACTS, ¶1427–1428.

## 3. EMPLOYERS WITHIN ACTS, ¶1429–1434.

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## XVI. PROCEEDINGS TO SECURE COMPENSATION—Cont'd

## (N) WEIGHT AND SUFFICIENCY OF EVIDENCE—Cont'd

## 5. ACCEPTANCE OR ELECTION TO COME UNDER ACTS, ¶1462–1464.

## 6. DEPENDENCY AND RELATIONSHIP, ¶1465–1486.

## 7. ACCIDENT OR INJURY AND CONSEQUENCES THEREOF, ¶1487–1597.

## 8. DEFENSES AGAINST CLAIM FOR INJURY, ¶1598–1608.

## 9. AMOUNT AND PERIOD OF COMPENSATION, ¶1609.1–1675.

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## 11. CLAIM OR PETITION FOR COMPENSATION AND INSTITUTION OF PROCEEDINGS, ¶1681–1684.

## (O) AFFIDAVITS AND DEPOSITIONS, ¶1685–1686.

## (P) HEARING OR TRIAL, ¶1687–1764.

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## 2. PRODUCTION AND RECEPTION OF EVIDENCE AND EXAMINATION OF WITNESSES, ¶1695–1703.5.

## 3. QUESTIONS OF LAW AND FACT, ¶1704–1726.

## 4. JURY TRIAL, ¶1727–1729.

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## 3. DECISIONS REVIEWABLE, ¶1833–1836.

## 4. RIGHT OF REVIEW, ¶1837–1844.

## 5. PRESENTATION AND RESERVATION BELOW OF GROUNDS OF REVIEW, ¶1845–1866.

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## 7. TAKING AND PERFECTING PROCEEDINGS FOR REVIEW, ¶1872–1892.



**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE COMPENSATION—Cont'd****(T) REVIEW BY COURT—Cont'd**

8. EFFECT OF PROCEEDINGS FOR REVIEW AND SUPERSEDEAS OR STAY, ⚭1893–1894.
9. RECORD, ⚭1895–1905.
10. ASSIGNMENTS OF ERROR AND BRIEFS, ⚭1906–1907.
11. DISMISSAL, WITHDRAWAL, ABANDONMENT, HEARING, AND REHEARING, ⚭1908–1909.
12. SCOPE AND EXTENT OF REVIEW IN GENERAL, ⚭1910–1937.
- 12A. QUESTIONS OF LAW OR FACT, FINDINGS, AND VERDICT, ⚭1938–1940.
13. DETERMINATION AND DISPOSITION OF PROCEEDING, ⚭1941–1953.
14. PROCEEDINGS FOR FURTHER REVIEW, ⚭1954–1977.
15. LIABILITY ON BONDS AND SECURITIES, ⚭1978–1979.

**(U) COSTS AND ATTORNEY FEES, ⚭1980.1–1989.**

1. IN GENERAL, ⚭1980.1–1980.7.
2. ATTORNEY FEES, ⚭1980.8–1980.19.
3. PROCEEDINGS, ⚭1980.20–1989.

**XVII. INCREASE, DIMINUTION, TERMINATION, REINSTATEMENT, OR ADDITIONAL AWARD OF DISABILITY COMPENSATION, ⚭1990–2079.****(A) AWARDS GENERALLY, ⚭1990–2064.**

1. ADJUSTMENT OR TERMINATION OF COMPENSATION, ⚭1990–2051.
2. REVIEW, ⚭2052–2064.

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1. EXCLUSIVENESS OF REMEDIES AFFORDED BY ACTS, ⚭2084–2102.
2. ELECTION AND WAIVER OF REMEDIES, ⚭2103–2109.
3. DEFENSES; ABROGATION OR MODIFICATION OF COMMON-LAW DEFENSES, ⚭2110–2117.
4. NEGLIGENCE OF EMPLOYER AND MEASURE OF DAMAGES, ⚭2118–2121.
5. ACTIONS, ⚭2122–2141.

**(B) ACTION BY THIRD PERSON AGAINST EMPLOYER, ⚭2142–2157.**

1. IN GENERAL, ⚭2142–2144.
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1. RIGHT OF ACTION OF EMPLOYEE OR REPRESENTATIVE GENERALLY, ⚭2158–2170.
2. ELECTION OF REMEDIES, ⚭2171–2187.
3. RIGHT OF EMPLOYER OR INSURER TO REMEDY OF EMPLOYEE OR EMPLOYEE'S REPRESENTATIVE, ⚭2188–2205.
4. DEFENSES, ⚭2206–2214.
5. ACTIONS AND PROCEEDINGS, ⚭2215–2242.
6. AMOUNT AND ITEMS OF RECOVERY, ⚭2243–2247.
7. RIGHT TO PROCEEDS OF ACTION OR SETTLEMENT, ⚭2248–2252.

**(D) ACTION AGAINST PHYSICIAN OR SURGEON FOR MALPRACTICE, ⚭2253–2254.****I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY.**

1. In general.
2. Statutory foundation and relation to common law.
3. Relation to insurance.
4. Distinguished from damages.



**413. WORKERS' COMPENSATION****I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY.(Cont'd)**

5. Distinguished from other acts and modes of payment.
6. Fault or negligence as element of liability.
7. Age, sex, intelligence, discretion, or motive of employee.
8. Basis in impairment of body or earning capacity.
9. Contractual character.
10. Constitutional provisions.
11. Purpose of legislation.
12. Constitutionality of statutes.
13. — In general.
14. — Effect of treaty.
15. — Retroactive provisions.
16. — Police power in general.
17. — Acceptance or rejection of statute, and election of remedies.
18. — Abrogation or modification of common law defenses.
19. — Abrogation or modification of other rights or remedies.
20. — Place of injury and extraterritorial operation of statutes.
21. — Injuries for which compensation may be had.
22. — Imposition of liability without fault.
23. — Occupational diseases.
24. — Persons affected.
25. — Employments affected.
26. — Compensation in general.
27. — Medical and hospital expenses, nursing, and funeral expenses.
28. — Double, treble, increased, or decreased compensation.
29. — Persons entitled to compensation on death of employee.
30. — Payment, enforcement, and disposition of compensation.
31. — Interest and penalties.
32. — Assignment or transfer of compensation.
33. — Waiver of rights.
34. — Increase, reduction, or termination of compensation.
35. — Insurance and insurance funds.
36. — Subrogation to rights of injured employee.

**I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY.(Cont'd)**

37. — Agreements as to compensation, compromise, settlement, and release.
38. — Remedies and procedure in general.
39. — Limitations and notice of claim.
40. — Pleading and evidence.
41. — Award or judgment.
42. — Review.
43. — Costs and fees.
44. Construction and operation of statutes in general.
45. — In general.
46. — Legislative intent in general.
47. — Meaning of language in general.
48. — Construction with reference to effect and consequences.
49. — Construction with reference to common law.
50. — Construction as a whole.
51. — Liberal or strict construction in general.
52. — Construction in favor of employee or beneficiary.
53. — Limitation on rule of liberal construction.
54. Retroactive operation of statutes.
55. — In general.
56. — Persons and employments within acts.
57. — Injuries for which compensation may be had.
58. — Effect of acts on other statutory or common law rights of action and defenses.
59. — Persons entitled on death of employee; rights of dependents, other beneficiaries, or representatives.
60. — Duration and amount of compensation for disability or death in general.
61. — Commutation of payments and lump sum payments.
62. — Expenses of treatment and burial.
63. — Payment of compensation.
64. — Insurance and insurance funds.
65. — Procedure in general.
66. — Notice of injury and claim of compensation.
67. — Limitation of time to present claim or bring action.

**413. WORKERS' COMPENSATION****I. NATURE AND GROUNDS OF EMPLOYER'S LIABILITY.(Cont'd)**

- 68. — Pleading and evidence.
- 69. — Review in general.
- 70. — Time for review.
- 71. — Fees and costs.
- 72. — Increase, diminution, termination, or reinstatement of compensation.
- 73. Amendment and repeal of statutes in general.

**II. WHAT LAW GOVERNS.**

- 74. In general.
- 75. Contracts within, and injury outside of, jurisdiction.
- 76. — In general.
- 77. — Necessity and effect of statutory provisions for extraterritorial effect.
- 78. — Contracts intended to be performed in other jurisdiction.
- 79. — Contract intended to be partly performed in other jurisdiction.
- 80. — Temporary or incidental character of work outside of jurisdiction.
- 81. — Determination of place of contract.
- 82. — Residence of parties.
- 83. Injury within, and contract outside of, jurisdiction.
- 84. — In general.
- 85. — Contract intended to be performed within jurisdiction.
- 86. — Contract intended to be performed outside of jurisdiction.
- 87. — Residence of parties.
- 88. — Determination of place of making contract.
- 89. — Temporary or incidental employment within jurisdiction.
- 90. Place of contract and of injury both outside of jurisdiction.
- 90.1. — In general.
- 91. — Applicability of local compensation acts.
- 92. — Applicability and enforcement of compensation acts of other jurisdictions.
- 93. State and federal laws in general.
- 93.5. Preemption.
- 94. Interstate commerce.
- 95. — In general.

**II. WHAT LAW GOVERNS.(Cont'd)**

- 96. — Necessity and effect of acceptance of workers' compensation acts.
- 97. — Railroads in general.
- 98. — Vessels.
- 99. — Express companies.
- 100. — Telegraph and telephone companies.

**III. EMPLOYMENTS INCLUDED.****(A) IN GENERAL.**

- 101. In general.
- 102. Definition of terms in general.
- 103. Necessity that employment be hazardous in general.
- 104. Necessity that employment be classified as hazardous.
- 105. — In general.
- 106. — Power to declare employment hazardous.
- 107. Tests of nature of employment in general.
- 108. Nature of business or nature of employee's work as controlling.
- 109. Different employments under same employer; hazardous and nonhazardous employments in same business.
- 110. — In general.
- 111. — Injury in nonhazardous employment.
- 112. — Injury in hazardous employment.
- 113. Hazard with reference to machinery; power-driven machinery in general.

**(B) PARTICULAR EMPLOYMENTS.**

- 114. In general.
- 115. Ordinance or statutory regulations.
- 116. Pecuniary gain or profit.
- 117. Business, occupation, profession, or trade.
- 118. Industry, industrial enterprise, establishment, or work.
- 119. Manual or mechanical labor or work.
- 120. Clerical work and hazards of business.
- 121. Executive, managerial, or supervisory work.
- 122. Building, construction, and engineering work in general.

**413. WORKERS' COMPENSATION****III. EMPLOYMENTS INCLUDED.(Cont'd)**

123. Building, constructing, maintaining, repairing, demolishing, or moving building or structure; structural work.
124. — In general.
125. — Maintenance and care of buildings or structures.
126. Ownership and operation of buildings.
127. Canning, preparation of foods, meat packing, and packing houses.
128. Chemicals, explosives, and inflammable materials.
129. Engines and machines and installation or operation thereof.
130. Longshore work.
131. Logging and lumbering.
132. Coal, wood, and lumber yards.
133. Manufactures, manufacturers, and manufacturing enterprises.
134. Mercantile establishments, stores, commission houses, and similar establishments.
135. Printing, binding, lithographing, and similar work.
136. Mills, factories, breweries, refineries, workshops, and similar establishments.
137. — In general.
138. — Mills and milling.
139. — Factories.
140. — Workshop; machine shop.
141. Mining, quarrying, excavating, oil and gas wells, and similar works.
142. Commercial threshing.
143. Dredging, pile driving, and similar work.
144. Garages, service stations, and filling stations.
145. Work of salesmen, solicitors, collectors, and similar work.
146. Washing and cleaning windows and similar work.
147. Work of janitors and watchmen, and similar work.
148. Railroads and street railroads in general.
149. Aerial navigation.
150. Carriage by land or water.
151. Vehicles and operation thereof.
- 151.1. — In general.
152. — Nature of vehicles included in general.
153. — Motor vehicles.

**III. EMPLOYMENTS INCLUDED.(Cont'd)**

154. — Horse drawn vehicles.
155. — Loading and unloading.
156. — Work not directly connected with operation of vehicle.
157. — Employees using own vehicles.
158. Transfer and storage.
159. Warehousing and storage.
160. Sharp edged tools, grinders, or other implements.
161. Waterworks; gas and electric plants; pipe lines; and electrical work.
162. Work in connection with hoisting apparatus; elevators.
163. Public employment in general.
164. Domestic or household employment.
165. Farm labor; agriculture; ranch work.
166. — In general.
167. — Statutory exemption in general.
168. — Definition of terms in general.
169. — Necessity and effect of election to come under act.
170. — Insurance of farm labor.
171. — As dependent on pay roll or number of employees.
172. — Determination of character of employment in general.
173. — Different employments under same employer in general.
174. — Temporary service on farm.
175. — Use of machinery in general.
176. — Operation of threshing machines.
177. — Operation of corn shredder.
178. — Operation of vehicles.
179. — Dairying.
180. — Horticulture.
181. — Raising and care of live stock, poultry, and similar work.
182. — Turpentine business.
183. — Lumbering, wood-sawing, and similar work.
184. — Construction, repair, or demolition of building, improvement, or structure.
185. — Ranch work.

**IV. EMPLOYERS WITHIN ACTS.****(A) IN GENERAL.**

186. In general.

**413. WORKERS' COMPENSATION****IV. EMPLOYERS WITHIN ACTS.(Cont'd)**

- 187. Statutory employers.
- 188. Hiring by agent or another employee.
- 189. — In general.
- 190. — Authority to employ.
- 191. — Estoppel or ratification.
- 192. — Liability of undisclosed principal, or agent.
- 193. Change of employer.
- 194. Insurance of employer performing labor.

**(B) PARTICULAR EMPLOYERS.**

- 195. In general.
- 196. Number of employees.
- 197. — In general.
- 198. — Who may be counted as employees.
- 199. — Nature or place of business or work.
- 200. — Duration, time, and regularity of employment or service.
- 201. Simultaneous and successive employers of same employee.
- 202. General and special employers; employers of lent employees.
- 203. — In general.
- 204. — Liability of general employer.
- 205. — Liability of special employer.
- 206. — Liability of both general and special employers.
- 207. — Requisites for special employment.
- 208. — Power of direction and control.
- 209. — Payment of wages.
- 210. — Person hiring team or motor vehicle and driver.
- 211. Employers accepting act though not subject thereto.
- 212. Partnership.
- 213. Joint venturers.
- 214. Labor unions and associations of workers.
- 215. Corporations.
- 215.5. Sole proprietors; self-employed persons.
- 216. Legal representatives.
- 217. Receivers, assignees, and conservators.
- 218. Governmental body.
- 219. — In general.
- 220. — Federal government and agencies.
- 221. — State government and agencies.

**IV. EMPLOYERS WITHIN ACTS.(Cont'd)**

- 222. — Municipal corporations in general.
- 223. — Cities, towns, and villages.
- 224. — Counties.
- 225. — School districts.
- 226. — Townships.
- 227. — Other divisions or districts.
- 228. — Liability as between two bodies involved.
- 229. Non-profit or charitable institutions.

**V. EMPLOYEES WITHIN ACTS.****(A) IN GENERAL.**

- 230. In general.
- 231. Meaning of "employee" and similar terms in general.
- 232. Distinguished from other relations.
- 233. Necessity of relation of master and servant or employer and employee.
- 234. Creation and existence of relation in general.
- 235. Right to hire, discharge, or control.
- 236. Payment of wages.
- 237. — In general.
- 238. — Necessity of payment or liability.
- 239. — By whom paid.
- 240. — Payment of commissions, or by piece or quantity.
- 241. — Payment in property or services.
- 242. Contractual relation.
- 243. — In general.
- 244. — Necessity of contract.
- 245. — Express or implied contract.
- 246. — Making and requisites of contract.
- 247. — Legality and validity of contract.
- 248. Commencement, duration, and termination of relation.
- 249. Duration and continuity of employment.
- 250. Effect of insurance of liability.
- 251. Earnings.

**(B) PARTICULAR CLASSES OF PERSONS IN GENERAL.**

- 252. In general.
- 253. Persons prohibited by law from being employed.
- 254. Substitutes.
- 255. Volunteers.
- 256. Nonresidents and aliens.

**413. WORKERS' COMPENSATION****V. EMPLOYEES WITHIN ACTS.(Cont'd)**

- 257. Members of employer's family.
- 258. Receivers.
- 259. Member of profession.
- 260. Seamen, fishermen, stevedores, and other maritime employees.
- 261. Soldiers; militiamen.
- 262. Federal acts.

**(C) CASUAL EMPLOYEES AND EMPLOYMENT IN TRADE OR BUSINESS OF EMPLOYER.****1. CASUAL EMPLOYEES IN GENERAL.**

- 263. Meaning of term "casual" in general.
- 264. Exclusion or inclusion of casual employees in general.
- 265. Determination and tests of nature of employment in general.
- 266. Recurring employment.
- 267. Particular employees.
- 268. — In general.
- 269. — Persons doing mechanical or repair work in general.
- 270. — Persons constructing, improving, and repairing buildings or structures.
- 271. — Persons removing or destroying building or structure.
- 272. — Painters and decorators.
- 273. — Persons employed in mining, excavating, and similar work.
- 274. — Persons engaged in hauling, loading, and unloading.
- 275. — Household workers, waiters, and similar workers.
- 276. — Professional workers.
- 277. — Public employees.

**2. EMPLOYMENT IN TRADE OR BUSINESS OF EMPLOYER.**

- 278. In general.
- 279. Necessity that employment be in usual course of business to be included.
- 280. Necessity that employment be both casual and not in usual course of business to be excluded.
- 281. Test and determination of employment in usual course of business in general.
- 282. Particular employments in trade or business of employer.
- 283. — In general.
- 284. — Public work or employment.

**V. EMPLOYEES WITHIN ACTS.(Cont'd)**

- 285. — Work of superintendents, foremen, managers, and similar work.
- 286. — Mechanical and repair work in general.
- 287. — Construction of buildings or structures.
- 288. — Reconstruction, remodeling, improvement, or repair of buildings or structures.
- 289. — Demolition or removal of buildings or structures.
- 290. — Painting and decorating.
- 291. — Construction and installation of machinery and equipment.
- 292. — Mining, quarrying, excavating, and similar work.
- 293. — Hauling, carriage, loading, and unloading.
- 294. — Cutting or trimming trees.

**(D) PARTNERS AND JOINT VENTURERS.**

- 295. In general.

**(E) CORPORATE OFFICERS AND STOCKHOLDERS.**

- 297. In general.
- 298. Capacity to act as employee in general.
- 299. Particular officers and stockholders in general.
- 300. Principal stockholders and amount of salary.
- 301. Performance of executive duties.
- 302. Performance of labor or services.
- 303. Effect of insurance.

**(F) INDEPENDENT CONTRACTORS.**

- 304. In general.
- 305. Determination and tests of status in general.
- 306. Direction, control, or supervision in general.
- 307. Right of control as distinguished from exercise of control.
- 308. Limitation on right of control; exercise of limited control.
- 309. Right or power to terminate relation.
- 310. Nature of service or business.
- 311. Hiring, furnishing, controlling, discharging, and paying assistants, and assistance by employer.

**413. WORKERS' COMPENSATION****V. EMPLOYEES WITHIN ACTS.(Cont'd)**

- 312. Furnishing equipment, material, or supplies.
- 313. Payment for services.
- 314. Dual capacity as employee and independent contractor.
- 315. Persons in particular employments.
- 316. — In general.
- 317. — Public employees in general.
- 318. — Unskilled laborers in general.
- 319. — Superintendents, foremen, and managers.
- 320. — Mechanics and repairmen.
- 321. — Persons constructing or wrecking buildings.
- 322. — Repairers of buildings.
- 323. — Painters and decorators.
- 324. — Persons constructing and installing instrumentalities and equipment.
- 325. — Watchmen, janitors, and caretakers.
- 326. — Furnishers of materials and supplies.
- 327. — Persons working in mines, quarries, or excavations, and similar work.
- 328. — Persons cutting and sawing logs and lumber.
- 329. — Persons loading and unloading vehicles.
- 330. — Persons clearing, grading, and constructing streets and rights of way.
- 331. — Haulers, carriers, and deliverymen in general.
- 332. — Transporters of persons.
- 333. — Haulers of logs and lumber.
- 334. — Haulers of gravel, and building and road material.
- 335. — Haulers of foodstuff and agricultural products.
- 336. — Haulers of refuse and garbage.
- 337. — Aviators.
- 338. — Professional persons.
- 339. — Entertainers.
- 340. — Newsboys and newsdealers.
- 341. — Filling station operators and employees.
- 342. — Salesmen, agents, and solicitors.
- 343. — Stevedores, seamen, and dredge operators.

**(G) EMPLOYEES OF CONTRACTOR OR SUBCONTRACTOR.**

- 344. In general.
- 345. Relationship between immediate employer and person sought to be held.
- 346. Relation between general contractor and subcontractor.
- 347. Who are independent contractors in general.
- 348. Who are subcontractors.
- 349. Contractor's employee or subcontractor as independent contractor.
- 350. Persons employed by contractor as employees of principal or of contractor.
- 351. Liability of general contractor to employees of subcontractor.
- 352. Liability as owner or proprietor.
- 353. Work of original employer.
- 354. — In general.
- 355. — Acts constituting part of employer's business.
- 356. Insurance by contractor or subcontractor or device to escape liability by principal.
- 357. — In general.
- 358. — Effect of insurance.
- 359. — Failure to insure or to require insurance.
- 360. Degree of liability; primary and secondary liability.
- 361. Employees of lessees or licensees.

**(H) CHILDREN OR MINORS.**

- 362. Applicability of Workers' Compensation Acts to minors in general.
- 363. Minors legally employed in general.
- 364. — In general.
- 365. — Age of minor.
- 366. Minors illegally employed in general.
- 367. — In general.
- 368. — Age of minor.
- 369. — Test and determination of illegality of employment in general.
- 370. — Minors employed in violation of ordinances.
- 371. Employment certificates, permits, and proof of age.
- 372. Emancipation of minor.
- 373. Independent contractors.

**413. WORKERS' COMPENSATION****(I) PUBLIC OFFICERS AND EMPLOYEES.**

- 374. In general.
- 375. Officers in general.
- 376. Employees in general.
- 377. State officers and employees in general.
- 378. County officers and employees in general.
- 379. Township officers and employees in general.
- 380. Municipal officers and employees in general.
- 381. Road and bridge officers and employees.
- 382. School officers and employees.
- 383. Sheriffs and constables and their assistants.
- 384. Police department officers and employees; marshals.
- 385. Fire department officers and employees.
- 386. Relief workers.
- 387. Convicts or prisoners.
- 388. Taxpayer working out road tax.
- 389. Employee of independent contractor or subcontractor.
- 390. Effect of other provisions for relief.

**VI. ACCEPTANCE OR ELECTION TO COME UNDER ACT.**

- 391. Compulsory or elective acts in general.
- 392. Acceptance or rejection of acts in general.
- 393. Election by employer.
- 393.1. — In general.
- 394. — Necessity.
- 395. — Sufficiency in general.
- 396. — Notice to employee in general.
- 397. — Posting notices.
- 398. — Election as to one or more distinct kinds of business.
- 399. Election by employee.
- 400. — In general.
- 401. — Necessity of election and right to elect in general.
- 402. — Successive or intermittent employments.
- 403. — Acts constituting election.
- 404. — Minors.
- 405. Time of election.
- 406. Effect of election.
- 407. Withdrawal or termination of election.

**VII. COMPENSATION ON DEATH OF EMPLOYEE.****(A) PERSONS ENTITLED TO BENEFITS.****1. IN GENERAL.**

- 410.1. In general.
- 410.2. Alienage or nonresidence of claimant.
- 410.3. Dependency of claimant as condition of claimant's right.
- 410.4. Partial dependency as sufficient basis of claimant's right.
- 410.5. Total and partial dependency defined and distinguished.
- 410.6. Who are dependents in general.
- 410.7. Actual dependents in general.
- 410.8. Legal liability of deceased to support or voluntary contributions of deceased.
- 410.9. Amount, form, or regularity of deceased's contributions as affecting claim of dependency.
- 410.10. Claimant's earning ability or other resources.
- 410.11. Measure or extent of support needed.
  - (1). In general.
  - (2). Station in life as measuring extent of needed support.
- 410.12. Necessity that dependency be upon deceased's earnings, not other resources.
- 410.13. Necessity or character of family expenses to which deceased contributed.
- 410.14. Actual use of contributions for necessary support.
- 410.15. Conclusive presumption of dependency.
- 410.16. Time of determination of dependency or relation.

**2. PERSONS IN PARTICULAR RELATIONSHIPS TO EMPLOYEE.**

- 420.1. In general.
- 420.2. Membership in family or household.
- 420.3. Surviving spouses.
- 420.4. — In general.
- 420.5. — Status as respects marriage, common-law marriage, or illegal marriage.
- 420.6. — Time of marriage.

**413. WORKERS' COMPENSATION****VII. COMPENSATION ON DEATH  
OF EMPLOYEE.(Cont'd)**

- 420.7. — Deceased's illegal marriage to another as affecting lawful spouse.
- 420.8. — Living together or separated.
- 420.9. — Living apart for justifiable cause or without fault.
- 420.10. — Abandonment, desertion, or voluntary living apart by surviving spouse.
- 420.11. — Divorce proceedings.
- 420.12. — Insanity of surviving spouse.
- 420.13. — Legal obligation or legal liability to support.
- 420.14. — Acquiescence by surviving spouse in deceased's failure to support.
- 420.15. — Conclusive presumption of dependency.
- 420.16. — Amount, form, and regularity of deceased's contributions as affecting claim of dependency.
- 420.17. — Spouse's earning ability or other resources as affecting dependency.
- 420.18. — Necessity or character of family expenses to which deceased contributed as affecting claim of dependency.
- 420.19. — Time of determination of dependency.
- 420.20. Children.
- 420.21. — In general.
- 420.22. — Adopted children.
- 420.23. — Stepchildren.
- 420.24. — Illegitimate children in general.
- 420.25. — Illegitimate children as members of family of or supported by deceased.
- 420.26. — Posthumous children.
- 420.27. — Children to whom deceased stood in loco parentis, or membership in family or support by deceased as conferring right.
- 420.28. — Orphans.
- 420.29. — Dependency of child in general.
- 420.30. — Presumed dependency in general.
- 420.31. — Age of child as affecting dependency.
- 420.32. — Amount, form, or regularity of deceased's contributions.

**VII. COMPENSATION ON DEATH  
OF EMPLOYEE.(Cont'd)**

- 420.33. — Child's earning power or other resources or support by others as affecting dependency.
- 420.34. — Existence of surviving dependent spouse as affecting dependency.
- 420.35. — Divorce of parents as affecting dependency.
- 420.36. — Living separate or apart from deceased as affecting dependency or barring right to compensation.
- 420.37. — Time of determination of dependency.
- 420.38. Parents.
- 420.39. — In general.
- 420.40. — Who are parents.
- 420.41. — Dependency of parents in general.
- 420.42. — Presumed dependency and necessity of actual dependency.
- 420.43. — Total or partial dependency.
- 420.44. — Amount, form, or regularity of deceased's contributions.
- 420.45. — Parent's earning ability or other resources as affecting dependency.
- 420.46. — Necessity of or character of family expenses to which deceased contributed.
- 420.47. — Time of determination of dependency.
- 420.48. Brothers and sisters.
- 420.49. — In general.
- 420.50. — Dependency.
- 420.51. Grandchildren and grandparents.
- 420.52. Nieces, nephews, aunts, and uncles.

**3. CONFLICTING CLAIMS, PRIORITIES,  
AND APPORTIONMENT.**

- 430.1. In general.
- 430.2. Classes and priority.
- 430.3. — In general.
- 430.4. — Partial and total dependency in general.
- 430.5. — Priority of particular enumerated relationships.
- 430.6. Apportionment.



**413. WORKERS' COMPENSATION****4. EFFECT OF DEATH, MARRIAGE, COMING OF AGE, CESSATION OF DEPENDENCY, OR OTHER CHANGE OF CONDITION OF PERSON ENTITLED.**

- 440.1. In general.
- 440.2. On rights of particular persons entitled.
- 440.3. — In general.
- 440.4. — Surviving spouses and their representatives.
- 440.5. — Children and their representatives.
- 440.6. — Parents and their representatives.
- 440.7. — Brothers and sisters and their representatives.
- 440.8. On rights of other beneficiaries.
- 440.9. — In general.
- 440.10. — Children after cessation of payments to surviving spouse or child.
- 440.11. — Parents, grandchildren, and grandparents.

**(B) DEATH BENEFITS.**

- 450.1. In general.
- 450.2. Nature of right to compensation and time of vesting.
- 450.3. Prior award for disability as affecting death compensation.

**(C) DISABILITY COMPENSATION.**

- 460.1. In general.
- 460.2. Survivorship and persons entitled to balance of disability payments.
- 460.3. Settlement or agreement, balance due under.
- 460.4. Amount of balance of disability installments.
- 460.5. Death of employee without having claimed compensation.

**VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.****(A) NATURE AND CHARACTER OF PHYSICAL HARM.****1. IN GENERAL.**

- 511. In general.
- 512. Meaning of terms injury and personal injury and similar terms in general.
- 513. "Accident" and "injury" distinguished.
- 514. What are accidents in general.
- 515. What are accidental injuries in general.

**VIII. INJURIES FOR WHICH COMPENSATION MAY BE HAD.(Cont'd)**

- 516. Necessity that injury be accidental in general.
- 517. Necessity that injury happen suddenly and be traceable to definite time, place, and occasion; "event."
- 518. Physical nature of injury; violence, marks, and objective symptoms.
- 519. Intention, design, fault, or negligence, as affecting accidental nature of injury.
- 520. Willful or intentional acts of employer, fellow servant, or third person.

**2. DISEASES, INFECTIONS, AND POISONING.**

- 521. In general.
- 522. Necessity of traumatic or accidental origin in general.
- 523. Disease constituting personal injury or injury by accident in general.
- 524. Disease resulting from injury, accident, or fortuitous event in general.
- 525. Diseases resulting from contact with poisonous substances in general.
- 526. Diseases resulting from bruises and abrasions.
- 527. Inhalation of gas, fumes, or dust.
- 528. Exposure.
- 529. Weakened resistance.
- 530. Infections in general.
- 531. Particular diseases.
- 532. — In general.
- 533. — Anthrax.
- 534. — Apoplexy.
- 535. — Heart diseases.
- 535.5. — Immune system disorders.
- 536. — Influenza.
- 537. — Kidney diseases.
- 538. — Lung diseases in general.
- 539. — Pneumonia.
- 540. — Tetanus.
- 541. — Tuberculosis.
- 542. — Typhoid fever.
- 543. — Meningitis.
- 544. — Paralysis.
- 545. — Ulcers, abscesses, and felons.
- 546. — Mental and emotional disability.
  - (1). In general.
  - (2). Physical injury requirement.
  - (3). Particular conditions or diseases.

**413. WORKERS' COMPENSATION****VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

- (4). — In general.
- (5). — Depression.
- (6). — Post-traumatic stress disorder.

**3. OCCUPATIONAL DISEASES.**

- 547. In general.
- 548. What are occupational diseases in general.
- 549. Particular diseases.
- 549.1. — In general.
- 549.2. — Lung diseases.
- 549.3. — Heart and cardiovascular diseases.
- 549.4. — Repetitive injury; cumulative trauma.
- 549.5. — Mental and emotional disability.
- 550. Disease as accidental injury and distinction between disease and injury.
- 551. Time of accrual of liability.

**4. AGGRAVATION OF PREVIOUSLY  
IMPAIRED CONDITION.**

- 552. In general.
- 552.5. Aggravation of preexisting disease, generally.
- 553. Necessity of accident and causal connection.
- 554. Effect of predisposing physical condition.
- 555.1. Aggravation of particular condition or disease.
- 555.2. — In general.
- 555.3. — Back.
- 555.4. — Head, neck, and shoulders.
- 555.5. — Extremities.
- 555.6. — Hemorrhages, strokes, and aneurysms.
- 555.7. — Heart and cardiovascular conditions.
- 555.8. — Lung diseases.
- 555.9. — Arthritis.
- 555.10. — Mental and emotional disability.
- 563.1. Aggravation of prior, work-related injury or disease.
- 563.2. — In general.
- 563.3. — Back injuries.

**VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

- 563.4. — Head, neck, and shoulder injuries.
- 563.5. — Injuries to extremities.
- 563.6. — Repetitive injury; cumulative trauma.
- (1). In general.
- (2). Carpal tunnel syndrome.
- 563.7. — Heart and cardiovascular conditions.
- 563.8. — Lung diseases.
- 563.9. — Arthritis.
- 563.10. — Mental and emotional disability.

**5. PARTICULAR INJURIES AND CONSEQUENCES.**

- 567. In general.
- 568.1. Trauma, muscular strains, and consequences of exertion and overexertion.
- 568.2. — In general.
- 568.3. — Back injuries.
- 568.4. — Head, neck, and shoulder injuries.
- 568.5. — Injuries to extremities.
- 568.6. — Repetitive injury; cumulative trauma.
- (1). In general.
- (2). Carpal tunnel syndrome.
- 570. Injuries to blood vessels; strokes and aneurysms.
- 571. Injuries to heart.
- 572. Hernia.
- 573. — In general.
- 574. — Immediate appearance of hernia.
- 575. — Immediate cessation of work.
- 576. — Pre-existing hernia or weakened structural condition.
- 577. Injuries to sexual organs.
- 578. Sunstroke and heat prostration.
- 579. — In general.
- 580. — As injury or personal injury in general.
- 581. — As accident or accidental injury.
- 582. Burns.
- 583. Consequences of exposure to cold, or to cold and wetting.
- 584. — In general.
- 585. — Freezing and frostbite.
- 586. Jolts, jerks, and jars.

**413. WORKERS' COMPENSATION****VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

- 587. Falls.
- 588. Bruises and irritations.
- 589. Injury to ears and impairment of hearing.
- 590. Injury to eyes and impairment of vision.
- 591. Injuries from lightning.
- 592. Bad posture.
- 593. Injuries by insects or animals.
- 594. Disfigurement.
- 595. Pain.
- 596. Mental and emotional disability.

**(B) REMOTE AND PROXIMATE CONSEQUENCES.**

- 597. In general.
- 598. Two or more causes.
- 599. Death.
- 600. — In general.
- 601. — Death from causes not related to accident.
- 602. — Time of death.
- 603. Suicide.

**(C) INJURIES ARISING OUT OF AND IN COURSE  
OF EMPLOYMENT IN GENERAL.**

- 604. In general.
- 605. Construction and application of statutory provisions in general.
- 606. What are injuries arising out of and in course of employment in general.
- 607. Arising out of employment in general.
- 608. — In general.
- 609. — Necessity of causal connection between employment and injury in general.
- 610. — What injuries arise out of employment in general.
- 611. — What risks are incidental to employment in general.
- 612. — Risks common to public at large.
- 613. — Necessity that injury be foreseen or foreseeable.
- 614. In course of employment in general.
- 615. — In general.
- 616. — Necessity that injuries occur in course of employment.
- 617. — What are injuries in course of employment in general.

**VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

- 618. Previously weakened or diseased condition.

**(D) PARTICULAR CAUSES, CIRCUMSTANCES,  
AND CONDITIONS OF INJURY.****1. IN GENERAL.**

- 619. Particular acts in or incidental to employment in general.
- 619.5. Injuries occurring while pursuing treatment.
- 620. Injuries by objects falling or thrown in general.
- 621. Drowning.
- 622. Poison, infection, contagion, exposure, or disease.
- 623. Injuries by insects or animals.
- 624. Extinguishment of fires.
- 625. Entertainments on behalf of employer.

**2. ACTS DONE UNDER DIRECTION OR  
PERMISSION, OR IN EMERGENCY.**

- 626. Acts done under direction or permission of employer in general.
- 627. Acts in emergencies.

**3. NEGLIGENCE, UNREASONABLE, OR VOLUNTARY  
ACTS, AND INCURRENCE OF RISK.**

- 628. Negligent or unreasonable acts in general.
- 629. Voluntary act or incurrance of risk outside of employment.
- 630. — In general.
- 631. — Particular acts.

**4. INJURIES BY ELECTRICITY,  
EXPLOSIONS, OR BURNS.**

- 632. Injuries from explosions.
- 633. Injuries by electricity.
- 634. Burns.

**5. INJURIES FROM OPERATION, CARE, OR  
REPAIR OF VEHICLES, ELEVATORS  
OR HOISTING APPARATUS.**

- 635. Injuries in operation, repair, or care of vehicles in general.
- 636. Injuries from operation or use of elevators or hoisting apparatus.

**6. INJURIES BY ELEMENTS OR ACT OF GOD.**

- 637. In general.

**413. WORKERS' COMPENSATION****VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

- 638. Storms and floods.
- 639. Lightning.
- 640. Earthquakes.
- 641. Frostbite or freezing.
- 642. Sunstroke or heat prostration.

**7. STREET ACCIDENTS IN GENERAL.**

- 643. In general.
- 644. Necessity of using highway or street in general.
- 645. Risks common to public.
- 646. Highway employees.
- 647. Injuries by vehicles in general.
- 648. Injuries by vehicles to persons on foot.

**8. SLIPPING, TRIPPING, OR FALLS.**

- 649. In general.
- 649.1. Accidental character.
- 649.2. Cause.
- 649.3. Relation to employment in general.
- 649.4. As cause of injury or disability in general.

**9. ACTS FOR PERSONAL COMFORT OR  
CONVENIENCE OF EMPLOYEE.**

- 652. In general.
- 653. Preparing to begin or quit work and washing up.
- 654. Satisfying thirst or hunger.
- 655. Seeking warmth or shelter.
- 656. Seeking fresh air.
- 657. Heeding call of nature.
- 658. Making or answering telephone calls.
- 659. Resting or sleeping.
- 660. Use of tobacco.

**10. ACTS FOR BENEFIT OF EMPLOYER  
AND EMPLOYEE.**

- 661. In general.
- 662. Repair or care of property of employee used in employment.
- 663. Catching rides or taking short cuts.
- 664. Recreation of employees.

**11. ACTS FOR INDIVIDUAL PURPOSES  
OR BENEFIT OF EMPLOYEE.**

- 665. In general.
- 666. Deviation from employer's business in general.

**VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

- 667. Injuries while returning or after return to employer's business.
- 668. Visiting with co-employees or other persons.

**12. ACTS FOR BENEFIT OF CO-EMPLOYEE  
OR THIRD PERSON.**

- 669. Acts for benefit of co-employee.
- 670. Acts for benefit of third persons.

**13. HORSEPLAY AND PRACTICAL JOKING.**

- 671. In general.
- 672. Acts of fellow employees in general.
- 673. Customary acts, knowledge of employer, and duty to prevent.
- 674. Use of compressed air, electricity, explosives, or fire.
- 675. Articles thrown by other employees.
- 676. Participation by employee injured.
- 677. Acts of third persons.

**14. INJURIES BY ACTS OF CO-EMPLOYEE  
OR OF THIRD PERSON.**

- 678. In general.
- 678.1. Assaults in general.
- 680.1. Acts of co-worker.
- 680.2. — In general.
- 680.3. — Reasons for act in general.
- 680.4. — Relation to employment.
- 680.5. — Assaults.
  - (1). In general.
  - (2). Reasons for assault in general.
  - (3). Relation to employment.
- 689.1. Acts of third persons.
- 689.2. — In general.
- 689.3. — Reasons for act in general.
- 689.4. — Relation to employment.
- 689.5. — Assaults.
  - (1). In general.
  - (2). Reasons for assault in general.
  - (3). Relation to employment.

**15. ACCIDENTAL SHOOTING.**

- 698. In general.
- 699. By employer.
- 700. By weapons in possession of injured employee.
- 701. By co-employee.

**413. WORKERS' COMPENSATION****VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

702. By third persons in general.  
703. By public officers.

**16. INJURIES BEFORE OR AFTER WORKING  
HOURS OR BEFORE ENTERING ON OR  
AFTER LEAVING EMPLOYMENT.**

704. Injuries before entering on, or after leaving, employment.  
705. Injuries before or after working hours.  
706. — In general.  
707. — Before working hours in general.  
708. — After working hours in general.  
709. — Quarters or meals furnished by employer.

**17. PLACE OF INJURY WITH REFERENCE TO  
PLANT OR PREMISES OF EMPLOYER.**

710. In general.  
711. Necessity that injuries occur in, at, or about plant, premises, or place of work of employer.  
712. What injuries occur on, in, at, or about premises, plant, or place of work of employer.  
713. Furtherance of employer's business.  
714. Outside workers in general.  
715. Traveling employees.  
716. Going from one place of work to another.  
717. Returning to employer's premises from outside work.  
718. On errand by specific request or direction of employer or to transact specific business.

**18. INJURIES WHILE GOING TO OR FROM WORK.**

719. In general.  
720. Seamen.  
721. Contract of employment covering time of going or coming.  
722. Injuries before leaving, or after arriving at, employee's home.  
723. Furtherance of employer's business.  
724. Injuries on highways.  
725. — In general.  
726. — Injuries by vehicles.  
727. — Injuries at railroad crossings.  
728. Injury with reference to plant or premises of employer.

**VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

729. — In general.  
730. — Injuries on employer's premises in general.  
731. — Necessity that injuries occur on premises of employer.  
732. — What constitutes premises.  
733. Transportation by employer.  
734. — In general.  
735. — Contracts for transportation in general.  
736. — Direction of employer.  
737. — Vehicles furnished for purpose of transportation of employees.  
738. — By boat or ferry.  
739. — By horse or horse-drawn vehicle.  
740. — By street cars.  
741. — By railroad.  
742. — By motor vehicle in general.  
743. — Permissive use of motor vehicles.  
744. — Deviation from route.  
745. — Boarding or alighting from motor vehicle.  
746. Transportation by employee.  
747. Transportation by co-employee or third person.  
748. Entering or leaving premises in general.  
749. Use of ways leading to or away from employer's premises.  
750. — In general.  
751. — Customary use of way or method of ingress or egress.  
752. — Ways furnished, maintained, or under control of employer.  
753. — Choice of way.  
754. — Crossing or using railroad tracks or bridges.  
755. Use of particular entrances, exits, or instrumentalities.  
756. — In general.  
757. — Elevators and stairways.

**19. INJURIES WHILE GOING TO OR FROM MEALS;  
GOING FOR PAY; GOING TO PUNCH TIME  
CLOCK; AND SIMILAR ACTS.**

758. Going to or from meals.  
759. — In general.  
760. — Injuries on roads, streets or bridges in general.  
761. — Injury by vehicles.

**413. WORKERS' COMPENSATION****VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

762. Going for pay, and other acts relating to wages.
763. Going to punch time clock or checking out.

**20. INTERVALS OR TEMPORARY CESSATION  
OF WORK; EMPLOYEE AWAY FROM  
WORKING PLACE.**

764. Intervals or temporary cessation of work.
765. — In general.
766. — Necessity that employee be actually at work.
767. — Rest periods.
768. — Noon hours and meal periods.
769. — Employees subject to call.
770. Employee away from working place.

**(E) DEFENSES AGAINST CLAIMS FOR  
COMPENSATION; MISCONDUCT  
OF EMPLOYEE.**

771. In general.
772. Abrogation of common-law defenses in general.
773. Misrepresentations in obtaining employment.
774. Serious and willful misconduct in general.
775. — In general.
776. — Meaning of terms in general.
777. — Particular acts constituting misconduct.
778. Willful or culpable negligence, serious neglect, or recklessness.
779. Violation of statutory or other regulations in general.
780. — In general.
781. — Failure to obtain license.
782. — Excessive speed.
783. — Unlighted vehicle.
784. — Violation of traffic regulations.
785. — Violation of mining regulations.
786. Violation of rules, orders, or warnings.
787. — In general.
788. — Making and enforcement of rules and orders in general.
789. — Employee's knowledge and understanding of rules and orders.
790. — Failure to enforce rules or orders.
791. — Acts prohibited in general.

**VIII. INJURIES FOR WHICH COMPENSATION  
MAY BE HAD.(Cont'd)**

792. — Place of work.
793. — Manner of doing work.
794. — Doing prohibited work.
795. — Use of vehicles, and modes of transportation.
796. — Operation and use of elevators.
797. Failure to use safety devices.
798. Intoxication.
799. Injury intentional on part of employee.
800. Injury caused by employee's assault or willful intention to injure another.

**IX. AMOUNT AND PERIOD  
OF COMPENSATION.****(A) BASIS FOR DETERMINATION OF AMOUNT.**

801. In general.
810. Earnings or wages in general.
811. Average earnings.
812. Daily wages.
813. Weekly wages; number of days included.
814. Choice between methods of computation.
815. Computation of earnings or wages.
816. — In general.
817. — Length of time in employment prior to injury.
818. — Wages of employee of same class.
819. — Employment and rate of wages when injured.
820. — Just and fair mode of computation.
821. — Part time; continuous employment; staggered employment.
822. — Seasonal, periodic, or intermittent employment.
823. — Interruption of employment or loss of time.
824. — Overtime.
825. — Full time.
826. — Second or subsequent injury.
827. — Board, lodging, and clothes.
828. — Earnings from several employers.
829. — Employees serving in different capacities.
830. — Volunteer fire or law enforcement personnel.
831. — Gratuities, tips, and bonuses; fringe benefits.

**413. WORKERS' COMPENSATION****IX. AMOUNT AND PERIOD OF  
COMPENSATION.(Cont'd)**

- 832. — Sums paid by employer for hire of truck or other instrumentality.
- 833. — Profits from business.
- 834. — Assistants and supplies.
- 835. — Possible increase of wages.
- 835.5. — Cost of living adjustment.

**(B) DISABILITY BENEFITS.****1. IN GENERAL.**

- 836. In general.
- 836.5. Factors considered.
- 837. Time between injury and beginning of compensation.
- 838. Commencement of disability or compensation; date of disability.
- 839. Duration and termination of period.
- 839.1. Amount of benefits in general.
- 839.2. Family status affecting amount.

**2. TEMPORARY OR PERMANENT  
DISABILITY IN GENERAL.**

- 840.1. In general.
- 840.2. Temporary disability.
- 840.3. — In general.
- 840.4. — Amount and period.
- 840.5. — Particular cases.
- 840.6. Permanent disability.
- 840.7. — In general.
- 840.8. — Amount and period.
- 840.9. — Particular cases.

**3. TOTAL OR PARTIAL DISABILITY IN GENERAL.**

- 850.1. In general.
- 850.2. Partial disability.
- 850.3. — In general.
- 850.4. — Amount and period.
- 850.5. — Particular cases.
- 850.6. — Percentage awards.
- 850.7. Total disability.
- 850.8. — In general.
- 850.9. — Amount and period.
- 850.10. — Particular cases.

**4. SUPPLEMENTAL AND IMPAIRED  
EARNING BENEFITS.**

- 860.1. In general.
- 860.2. Particular cases.

**5. PREVIOUS IMPAIRMENT OR MULTIPLE  
INJURIES; APPORTIONMENT.**

- 865.1. In general.
- 865.2. Particular cases in general.
- 865.3. Successive employers or insurers.
- 865.4. Multiple compensable injuries or impairments.

**6. MAXIMUM MEDICAL IMPROVEMENT;  
MULTIPLE AWARDS.**

- 870.1. In general.
- 870.2. Multiple awards for single injury generally.
- 870.3. Healing period.
- 870.4. Effect of maximum medical improvement on benefits.
- 870.5. Particular cases.

**7. LIMITATIONS ON AMOUNT;  
EXTENDED BENEFITS.**

- 875.1. In general.
- 875.2. Nominal benefits.
- 875.3. Minimum time of disability.
- 875.4. Minimum and maximum compensation; benefit cap.
- 875.5. Multiple injuries or impairments.
- 875.6. Extended benefits.

**8. EMPLOYMENT AND EARNING CAPACITY.**

- 880.1. In general.
- 880.2. Impairment of earning capacity.
- 880.3. — In general.
- 880.4. — Factors considered in general.
- 880.5. — Impairment as a requirement for recovery.
- 880.6. — Employment at comparable wage as when injured.
- 880.7. — Particular cases.
- 880.8. Acceptance of employment or amount of wages as affecting eligibility.
- 880.9. Incapacity for work or employment.
- 880.10. — In general.
- 880.11. — Factors considered in general.
- 880.12. — Particular cases in general.
- 880.13. — Odd lot.
- 880.14. — Inability to work without pain.
- 880.15. Reasonable or gainful employment.
- 880.16. Light or occasional employment; accommodated work.
- 880.17. Employment in same work as when injured.

**413. WORKERS' COMPENSATION**

**IX. AMOUNT AND PERIOD OF COMPENSATION.(Cont'd)**

880.18. Claimant's training and qualifications.

880.19. Release to return to work.

880.20. Efforts to obtain employment; work search.

(1). In general.

(2). Acceptance or rejection of job offer generally.

(3). Voluntary limitation of income; part-time work.

(4). Suitable or available employment.

(5). Reinstatement; employer's job offer.

880.21. Economic conditions affecting employment; strike or layoff.

880.22. Departure from position; withdrawal from workforce.

880.23. — In general.

880.24. — Voluntary departure; retirement.

880.25. — Discharge for cause.

880.26. — Incarceration.

**(C) SCHEDULED AND OTHER PARTICULAR INJURIES.**

885.1. In general.

885.2. Medical impairment; impairment ratings.

885.3. Diseases.

885.4. Effect of previous impairment on scheduled injury; apportionment.

885.5. Multiple scheduled injuries.

885.6. Scheduled award and nonscheduled award.

885.7. Injury to the body as a whole.

885.8. Muscular strains and consequences of exertion generally.

885.9. Heart, cardiovascular, and lung conditions.

885.10. Head, neck, or shoulder injuries.

885.11. Back injuries.

885.12. Hip injuries.

885.13. Loss of, or injury to, member in general.

885.14. Loss of, or injury to, leg.

885.15. Loss of use of leg.

885.16. Loss of, or injury to, ankle, foot, or toes.

885.17. Loss of use of ankle, foot, or toes.

**IX. AMOUNT AND PERIOD OF COMPENSATION.(Cont'd)**

885.18. Loss of, or injury to, arm.

885.19. Loss of use of arm.

885.20. Loss of, or injury to, wrist, hand, or fingers.

885.21. Loss of use of wrist, hand, or fingers.

885.22. Eye injuries and impairment of vision.

885.23. Ear injuries and impairment of hearing.

885.24. Hernia.

885.25. Skin conditions.

885.26. Mental and emotional disability.

**(D) OTHER BENEFITS.**

**1. PAIN AND SUFFERING.**

890.1. In general.

890.2. Particular cases.

**2. DISFIGUREMENT.**

895.1. In general.

895.2. In addition to award for loss or disability.

895.3. Particular cases.

**3. REHABILITATION AND RETRAINING COMPENSATION.**

900.1. In general.

900.2. Claimant's right to rehabilitation.

900.3. Rehabilitation as affecting eligibility for or amount of benefits.

**(E) COMPENSATION FOR DEATH.**

**1. IN GENERAL.**

908. In general.

909. Prior physical impairment.

910. Amount.

911. — In general.

912. — Minimum and maximum allowances.

913. — Computation in general.

914. — Days or hours per week.

915. — Governmental regulation of time per week.

916. — Time in employment before death.

917. — Earnings of other employees of same class.

918. — Employment and rate of wages when injured.



**413. WORKERS' COMPENSATION****IX. AMOUNT AND PERIOD OF  
COMPENSATION.(Cont'd)**

- 919. — Part time; continuous employment; staggered employment.
- 920. — Seasonal or intermittent employment.
- 921. — Earnings from several employers.
- 922. — Assistants and supplies.
- 923. Amount as affected by extent of dependency in general.
- 924. Amount as affected by partial dependency in general.
- 925. Necessity that contributions be for support.
- 926. Extent of contributions.
- 927. — In general.
- 928. — Deduction of cost of maintenance and similar expenses.
- 929. — Contribution of supplies and services.
- 930. — Probable contributions.
- 931. — Contribution of earnings from other employers.

**2. PERIOD OF COMPENSATION.**

- 932. Commencement.
- 933. Duration and termination.

**(F) DEDUCTIONS AND OFFSETS.**

- 934.1. In general.
- 934.2. Payments in discharge of obligation to make compensation.
- 934.3. — In general.
- 934.4. — Particular cases.
- 934.5. Payments to employee as offsetting death benefits.
- 934.6. Wages and fringe benefits generally.
- 934.7. Payment of expenses.
- 934.8. Pensions.
- 934.9. Disability insurance benefits.
- 934.10. Social security, unemployment, and other government benefits.
- 934.11. Payments from other sources.

**(G) INCREASE OR REDUCTION  
OF COMPENSATION.****1. MISCONDUCT IN GENERAL (PRIOR TO INJURY).**

- 938. Employer's misconduct.
- 939. — In general.
- 940. — Misconduct of officer or agent.

**IX. AMOUNT AND PERIOD OF  
COMPENSATION.(Cont'd)**

- 941. — Failure to comply with safety statutes or orders.
- 942. — Employment of minor in general.
- 943. — False representations as to minor's age as excusing employment of minor.
- 944. — Failure to insure.
- 945. Employee's misconduct.

**2. MINIMIZING OR AGGRAVATING INJURY  
(SUBSEQUENT TO INJURY).**

- 946. Acts or treatment aggravating or minimizing injury in general.
- 947. Refusal or neglect to submit to medical or surgical treatment.
- 948. — In general.
- 949. — Surgical services in general.
- 950. — Expert opinions or physician's advice.
- 951. — Offer of medical or surgical treatment and demand or request by employer or employee.
- 952. — What constitutes refusal.
- 953. — Operation for hernia.
- 954. — Second or further operation or additional treatment.
- 955. — Injuries resulting in death.
- 956. Results of medical or surgical treatment or lack of treatment.
- 957. — In general.
- 958. — X-ray treatments.
- 959. — Injuries resulting in death.

**(H) MEDICAL OR OTHER EXPENSES.****1. IN GENERAL.**

- 961. In general.
- 962. Dependent on compensable injury or award for injury.
- 963. Effect of employer's special contract to furnish treatment.
- 964. Authority of board or commission in general.
- 965. Extent of right.
- 966. — In general.
- 967. — Surgery.
- 968. — Artificial apparatus or appliances.
- 969. — Nurse hire.
- 970. — Services as nurse by member of employee's family.

**413. WORKERS' COMPENSATION**

- IX. AMOUNT AND PERIOD OF  
COMPENSATION.(Cont'd)**
971. — Treatment to relieve from effects of permanent injury.
972. — Treatment of ailment not resulting from injury in employment.
973. Enforcement or preservation of right to expenses.
974. — In general.
975. — Knowledge or notice of injury or need for services or request or demand and waiver thereof.
976. — Employer's failure to provide or waiver of right to provide as permitting employee's securing services elsewhere.
977. — Existence of employee's debt or employee's actual payment of debt.
978. — Notice of selection or employment of physician or hospital and waiver thereof.
979. — Physician's report as to treatment and waiver thereof.
980. — Physician's presentation of claim within statutory period.
981. — Approval by board or commission.
982. Period within which services may be rendered or expenses incurred.
983. — In general.
984. — Authorizing additional treatment or extension of time.
985. Rights of physicians and other persons rendering services.
986. — In general.
987. — Charitable organizations.
988. — Authority to bind employer or insurer.
989. Expenses of last sickness or funeral.
990. Amount allowable.
991. Persons entitled on death of employee.
- 991.5. Cost containment programs; managed care.
- 2. PROCEEDINGS FOR ALLOWANCE  
OR RECOVERY.**
992. Nature and form of remedy, and jurisdiction and venue.
993. — In general.
994. — Services rendered at employer's or insurer's request.
995. Time for proceedings and limitations.

- IX. AMOUNT AND PERIOD OF  
COMPENSATION.(Cont'd)**
996. Persons entitled to institute proceedings and parties.
997. Pleading.
- 998.1. Evidence.
- 998.2. — In general.
- 998.3. — Presumptions.
- 998.4. — Burden of proof.
- 998.5. — Admissibility.
- 998.6. — Weight and sufficiency.
- (1). In general.
- (2). Compensability of injury.
- (3). Extent of right; amount.
- (4). Enforcement or preservation of right.
- (5). Period.
- (6). Cost containment; managed care.
999. Hearing, findings, and original and supplemental awards.
1000. Rehearing and reopening case.
1001. Review.
1002. Attorney fees and costs.
- X. PAYMENT OF COMPENSATION AND  
COMPLIANCE WITH AWARD.**
- (A) MODE OF PAYMENT OR COMPLIANCE  
IN GENERAL.**
1003. In general.
1004. Payment to representatives of persons entitled and others.
- (B) PERIODICAL OR COMMUTED PAYMENTS.**
- 1. IN GENERAL.**
1005. Periodic or lump sum payments.
- 2. AGREEMENTS FOR COMMUTATION  
OF PAYMENTS.**
1006. In general.
1007. Penalty for unauthorized or prohibited agreement.
- 3. AWARD BY ARBITRATOR, COMMISSIONER,  
BOARD, OR COURT.**
1008. Jurisdiction and power.
1009. — In general.
1010. — Agreement or consent of parties.
1011. — Application or notice of hearing.
1012. — Approval by board.
1013. Grounds, propriety, and necessity.

**413. WORKERS' COMPENSATION****X. PAYMENT OF COMPENSATION  
AND COMPLIANCE WITH  
AWARD.(Cont'd)**

- 1014. Computation and amount.
- 1015. Proceedings in general.
- 1016. Persons entitled to institute proceedings, and parties.
- 1017. Pleadings.
- 1018. Evidence.
- 1018.1. — In general.
- 1019. — Presumptions and burden of proof.
- 1020. — Admissibility.
- 1021. — Weight and sufficiency.
- 1022. Trial.
- 1022.1. — In general.
- 1023. — Questions of law and fact.
- 1024. — Instructions.
- 1025. — Verdict and findings.
- 1026. Award or judgment.
- 1027. Setting aside award or judgment.
- 1028. Review.

**(C) ENFORCEMENT OF PAYMENT  
OR COMPLIANCE.**

- 1029. In general.
- 1030. Payment or reimbursement from special or surplus fund.
- 1030.1. — In general; second or subsequent injury or disability.
  - (1). In general.
  - (2). Prior injury or impairment.
  - (3). Nature, extent, and cause of subsequent disability.
  - (4). Proceedings.
    - (4.1). — In general.
  - (5). — Limitations.
  - (6). — Evidence.
  - (7). — Review.
- 1030.2. — Reopened cases.
- 1030.3. — Occupational disease.
- 1031. Enforcement against estate of deceased employer.
- 1032. Enforcement on insolvency of employer or insurer.
- 1033. Priorities.
- 1034. Maturing periodical payments on default.
- 1035. Action by state against noncomplying employer.

**X. PAYMENT OF COMPENSATION  
AND COMPLIANCE WITH  
AWARD.(Cont'd)**

- 1036. Action on award.
- 1037. Judgment on award.
- 1038. — In general.
- 1039. — Opening and vacating.
- 1040. Executions.
- 1041. Interest.
- (D) UNFAIR PRACTICES; BAD FAITH; PENALTIES.**
- 1042.1. In general.
- 1042.2. Reasonableness of employer's or insurer's conduct.
- 1042.3. — In general.
- 1042.4. — Controversion or dispute of claim.
  - (1). In general.
  - (2). Reasonable cause to dispute or deny.
  - (3). Notice of denial or controversion.
- 1042.5. — Employer's duty to investigate.
- 1042.6. — Employer's reliance on medical opinions.
- 1042.7. — Nonpayment pending appeal or further proceedings.
- 1042.8. — Delay.
- 1042.9. — Termination of benefits.
- 1042.10. — Lump sum payment; payment pursuant to settlement agreement.
- 1042.11. Entitlement to medical benefits.
- 1042.12. — In general.
- 1042.13. — Amount.
- 1042.14. Payment issues.
- 1042.15. — In general.
- 1042.16. — Late payment.
- 1042.17. Penalties.
- 1042.18. — In general.
- 1042.19. — Amount.
- 1042.20. Damages.
- 1042.21. — In general.
- 1042.22. — Compensatory.
- 1042.23. — Punitive.
- 1042.24. — Amount.
- 1042.25. Proceedings to enforce payment or compliance.
- 1042.26. — In general.
- 1042.27. — Exhaustion of remedies.
- 1042.28. — Hearing or trial.
  - (1). In general.

**413. WORKERS' COMPENSATION****X. PAYMENT OF COMPENSATION  
AND COMPLIANCE WITH  
AWARD.(Cont'd)**

- (2). Jurisdiction.
- (3). Evidence.
- (4). Questions of law and fact.
- (5). Determination; award; judgment.
- 1042.29. — Review.
- 1042.30. — Fees and costs.
  - (1). In general.
  - (2). Attorney fees.
  - (3). Costs.

**(E) EFFECT OF PAYMENT.**

- 1043. In general.
- 1044. Recovery back of payments.

**XI. INSURANCE AND PUBLIC FUNDS.****(A) IN GENERAL.**

- 1045. In general.
- 1046. Policy and purpose of statutes.
- 1047. Construction of statutes.
- 1047.5. Safety programs; inspections.
- 1047.7. Agents and brokers.

**(B) PUBLIC FUNDS.**

- 1048. In general.
- 1049. Administration, investment, and custody of funds.
- 1050. Premiums and rates.
- 1050.1. — In general.
- 1051. — Amount and assessment.
- 1052. — Liability and refund.
- 1053. — Payment and enforcement.
- 1053.5. — Payment by employee; withholding.
- 1054. Policy or contract.
- 1055. Change, cancellation, and forfeiture of policy.
- 1056. Payment into fund in case of absence of persons entitled to, or failure to claim, compensation.
- 1057. Payments out of fund in general.
- 1057.5. Specially dedicated funds.

**(C) SELF-INSURANCE.**

- 1058. In general.
- 1058.5. Reports.
- 1058.10. Pooling agreements.

**XI. INSURANCE AND PUBLIC FUNDS.(Cont'd)**

- 1059. Bond or security.
- 1060. Revocation of right to self-insurance.

**(D) PRIVATE INSURANCE.**

- 1061. In general.
- 1062. Requisites and sufficiency.
- 1063. Premiums and rates.
- 1064. Risks and coverage.
- 1065. — In general.
- 1066. — Right to refuse or limit risk.
- 1067. Estoppel of insurer.
- 1068. Change of insurers.
- 1069. Cancellation of policy.
- 1070. Reformation of policy.
- 1071. Rights as between employers, insurers, and employees.
- 1072. — In general.
- 1073. — Liability of insured employer to employee.
- 1074. Successive insurers.
- 1074.5. Reports.
- 1075. Jurisdiction and powers of compensation boards and commissions.

**XII. ADMINISTRATIVE OFFICERS  
AND BOARDS.**

- 1076. In general.
- 1077. Status and character.
- 1078. — In general.
- 1079. — Judicial or administrative.
- 1080. Continuity; change in personnel.
- 1081. Members.
- 1081.1. — In general.
- 1082. — Appointment, qualification, and tenure; disqualification.
- 1083. — Number requisite to action.
- 1084. Employees and agents.
- 1085. Jurisdiction.
- 1086. — In general.
- 1087. — Exclusiveness.
- 1088. — Presumptions.
- 1089. — Consent of parties, waiver, and estoppel.
- 1090. Powers and duties in general.
- 1091. Rules and orders.
- 1092. — In general.
- 1093. — Notice and publication.
- 1094. — Construction and operation.

**413. WORKERS' COMPENSATION****XII. ADMINISTRATIVE OFFICERS  
AND BOARDS.(Cont'd)**

- 1095. Rulings and decisions in general.
- 1096. Records.
- 1096.5. Creation and distribution of forms.
- 1096.10. Special boards, panels or committees.

**XIII. ASSIGNMENT OR TRANSFER  
OF RIGHTS.**

- 1097. Assignment of claim.
- 1098. Assignment of award or judgment.
- 1099. Agency to receive payment.

**XIV. WAIVER AND ESTOPPEL AS TO RIGHT  
TO CLAIM OR TO DENY LIABILITY FOR  
COMPENSATION.**

- 1100. In general.
- 1101. Express waiver.
- 1102. Acceptance of wages.
- 1103. Pursuit of other remedies against employer.
- 1104. Election to pursue third person.
- 1105. — In general.
- 1106. — Discontinuance or dismissal.
- 1107. — Release or settlement.
- 1108. — Deductions from compensation of amount of recovery or collection from third person.
- 1109. — Liability of employer or insurer for deficiency.
- 1110. Election to pursue third person and employer.
- 1111. Election to proceed in another jurisdiction.
- 1112. Recovery of compensation from another.
- 1113. Payments from other sources.
- 1114. Estoppel of, or waiver by, employer, or insurance carrier.

**XV. AGREEMENTS AS TO COMPENSATION;  
COMPROMISE, SETTLEMENT, AND  
RELEASE.****(A) REQUISITES AND VALIDITY.**

- 1115. In general.
- 1116. Fraud and misrepresentation.
- 1117. Mistake.
- 1118. Consideration.
- 1119. Parties.

**XV. AGREEMENTS AS TO COMPENSATION;  
COMPROMISE, SETTLEMENT, AND  
RELEASE.(Cont'd)**

- 1120. Form and execution in general.
- 1121. Verification, filing, and registration.
- 1122. Approval by court, board, or commission.
- 1122.1. — In general.
- 1123. — Necessity.
- 1124. — Power and duty of court, board, or commission.
- 1125. — Proceedings for approval.
- 1126. — Sufficiency.

**(B) CONSTRUCTION, OPERATION,  
AND ENFORCEMENT.**

- 1127. In general.
- 1128. Construction.
- 1129. Operation and effect in general.
- 1130. — In general.
- 1131. — As award.
- 1132. — As admission of liability.
- 1133. — Limitation to facts agreed upon.
- 1134. Operation and effect as to particular subject-matters.
- 1135. — In general.
- 1136. — Jurisdiction of board or commission.
- 1137. — Existence and cause of injury.
- 1138. — Extent of disability and amount of compensation.
- 1139. — As to dependency and rights of dependents.
- 1140. — As to notice, claim, and limitations.
- 1141. Enforcement.

**(C) REVIEW, MODIFICATION, AND CANCELLATION.**

- 1142. In general.
- 1143. Conditions precedent.
- 1144. Jurisdiction of court or commission to review.
- 1145. Grounds in general.
- 1146. Fraud, accident, coercion, or mistake.
- 1147. — In general.
- 1148. — Fraud or misrepresentation.
- 1149. — Mistake.
- 1150. Inadequacy or excessiveness of compensation.
- 1151. Limitations.

**413. WORKERS' COMPENSATION****XV. AGREEMENTS AS TO COMPENSATION;  
COMPROMISE, SETTLEMENT, AND  
RELEASE.(Cont'd)**

- 1152. Procedure in general.
- 1153. Scope of inquiry.
- 1154. Application or petition.
- 1155. Presumptions and burden of proof.
- 1156. Admissibility of evidence.
- 1157. Weight and sufficiency of evidence.
- 1158. — In general.
- 1159. — Fraud, accident, coercion, or mistake.
- 1160. Questions of law or fact.
- 1161. Instructions to jury.
- 1162. Findings, determination, and relief.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.****(A) IN GENERAL.**

- 1163. Institution of proceedings.
- 1164. Nature and form in general.
- 1165. Rules of procedure in general.
- 1166. Proceedings in court.
- 1167. Proceedings before boards, commissions, or arbitrators.
- 1168. Conditions precedent in general; dispute or refusal to pay.
- 1169. Abatement or revival.
- 1170. Joinder and consolidation of causes and proceedings.
- 1171. Motions.
- 1172. Stipulations.
- 1173. Continuances.
- 1174. Dismissal and nonsuit.
- 1175. Provisional allowances and advance payments.
- 1176. Jurisdiction of boards and commissions.
- 1177. — In general.
- 1178. — Exclusiveness.
- 1179. — Conditions precedent to exercise of jurisdiction.
- 1180. — Determination of jurisdictional facts.
- 1181. — Dependent on place of injury, contract, or residence.
- 1182. — By consent or conduct of parties.
- 1183. — Appearance.
- 1184. — Scope and extent.
- 1185. — Retention and continuance.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1186. — Objections and waiver.
- 1187. Jurisdiction of courts.

**(B) VENUE.**

- 1188. In general.

**(C) PARTIES.**

- 1189. In general.
- 1190. Persons entitled or required to institute proceedings.
- 1191. — In general.
- 1192. — Minors and their representatives.
- 1193. — Executors and administrators.
- 1194. Persons against whom proceedings may or must be brought.
- 1195. Joinder.
- 1196. Intervention, and bringing in new parties.
- 1197. Substitution.
- 1198. Objections and waiver.

**(D) TIME FOR INSTITUTION OF PROCEEDINGS,  
AND LIMITATIONS.****1. IN GENERAL.**

- 1199.1. In general.
- 1199.2. Effect of failure to timely file.
- 1199.3. Applicable limitations period.
  - (1). In general.
  - (2). Death benefits.
  - (3). General statutes of limitations.
- 1199.4. Laches and prematurity of proceedings.

**2. COMPUTATION, TOLLING, AND ACCRUAL.**

- 1199.5. In general.
- 1199.6. Particular cases in general.
- 1199.7. Claims for death benefits in general.
- 1199.8. Date of accident.
- 1199.9. Date of injury or disability in general.
- 1199.10. Diseases; occupational diseases.
- 1199.11. Repetitive injury; cumulative trauma.
- 1199.12. Excusing delay in instituting proceedings in general.
- 1199.13. Claimant's incapacity or incompetency in general.
- 1199.14. Age.

**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1199.15. Knowledge or ignorance of law or facts.
- 1199.16. Conduct of employer or insurer.
- 1199.17. — In general.
- 1199.18. — Notice or knowledge.
- 1199.19. — Fraud or representations.
- 1199.20. — Employer's report of accident.
- 1199.21. — Payment of compensation or agreement therefore.
  - (1). In general.
  - (2). What constitutes payment, and nature of payments in general.
  - (3). Payment of wages.
  - (4). Medical and hospital services.
  - (5). Agreement for compensation.
- 1199.22. Commencement and prosecution of action.
- 1199.23. — In general.
- 1199.24. — New claim after withdrawal or dismissal of previous claim or proceeding.

**3. WAIVER AND ESTOPPEL.**

- 1199.30. In general.
- 1199.31. Particular cases in general.
- 1199.32. Acknowledgment of liability, payment of compensation, or rendition of medical services.
- 1199.33. Failure to raise objections.

**(E) NOTICE OF ACCIDENT OR INJURY.****1. IN GENERAL.**

- 1216. Purpose of notice.
- 1217. Necessity.
- 1218. Persons who may give.
- 1219. Persons to whom given.
- 1220. Form and sufficiency.
- 1221. — In general.
- 1222. — Proceedings for compensation as notice.
- 1223. — Necessity of writing in general.
- 1224. — Specification of injury.
- 1225. Time for giving notice.
- 1226. — In general.
- 1227. — Hernia cases.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1228. — Requirement that notice be forthwith, immediate, or as soon as practicable.
- 1229. — Compliance with requirements as to time in general.
- 1230. — Computation of time.
- 1231. Waiver and estoppel.

**2. EXCUSING WANT OF, OR DEFECT IN, NOTICE.**

- 1232. In general.
- 1233. Ignorance of statutory requirements.
- 1234. Absence of knowledge of injury or extent thereof.
- 1235. Representations, promises, and fraudulent acts of employer.
- 1236. Accident, mistake, or unforeseen cause.
- 1237. Physical or mental disability.
- 1238. Minority of employees or dependents.
- 1239. Actual notice or knowledge in general.
- 1240. What constitutes knowledge.
- 1241. Time of knowledge.
- 1242. Knowledge of agent or representative in general.
- 1243. — In general.
- 1244. — Corporate officers and agents in general.
- 1245. — Other employees.
- 1246. — Physicians and surgeons.
- 1247. Knowledge of superintendents, managers, overseers, or foremen.
- 1248. — In general.
- 1249. — Superintendents and managers.
- 1250. — Foremen.
- 1251. Want of prejudice.
- 1252. — In general.
- 1253. — Effect of actual notice.
- 1254. Acknowledgment of liability and payment of compensation or agreement therefor.
- 1255. Employer's report of accident or notice of insurance.
- 1256. Discretion of court, commission, or board in determining sufficiency of excuse.

**(F) CLAIMS FOR COMPENSATION.**

*Time for making or filing claim for compensation, see XVI(D).*

**413. WORKERS' COMPENSATION****1. IN GENERAL.**

- 1257. Necessity for making or filing.
- 1258. Persons entitled to make or file.
- 1259. On whom served or where filed.
- 1260. Mode of service and filing.
- 1261. Abandonment of claim.
- 1261.5. Waiver and estoppel.

**2. REQUISITES AND SUFFICIENCY.**

- 1262. In general.
- 1263. Notice of accident as notice of claim or as including claim.
- 1264. Necessity for writing.
- 1265. Contents.
- 1266. Different or distinct claims or claimants.
- 1267. Defects and irregularities.
- 1268. Amendments.

**(G) MEDICAL EXAMINATION.**

- 1305. In general.
- 1306. Right to examination in general.
- 1307. Authority of court or board.
- 1308. Time for application.
- 1309. Application and determination.
- 1310. By whom made.
- 1311. Place of examination.
- 1312. Nature and extent of examination.
- 1313. Second or further examination.
- 1314. Effect of failure to require, or to submit to, examination.
- 1315. Autopsy.

**(H) ALTERNATIVE DISPUTE RESOLUTION.**

- 1316.1. In general.
- 1316.2. Arbitration.
- 1316.3. Mediation.

**(I) APPLICATION, PETITION, OR COMPLAINT.**

- 1318. In general.
- 1319. Sufficiency in general.
- 1320. Applicability of act.
- 1321. Right to bring proceedings.
- 1322. Notice and filing of claim.
- 1323. Time and place, and nature and extent of injury.
- 1324. Joinder of causes and election.
- 1325. Amended and supplemental pleadings.
- 1326. Demurrer or exception.

**(J) ANSWER OR NOTICE OF DEFENSE.**

- 1327. In general.
- 1328. Time for answer.
- 1329. Matters which must be pleaded.
- 1330. — In general.
- 1331. — Absence of notice or claim, and limitations.
- 1332. Admissions.
- 1333. Amendment.

**(K) ISSUES, PROOF, AND VARIANCE.**

- 1334. In general.
- 1335. Matters which must be proved.
- 1336. Evidence admissible under pleadings.
- 1337. Variance.

**(L) PRESUMPTIONS AND BURDEN OF PROOF.****1. IN GENERAL.**

- 1338. Presumptions in general.
- 1339. Burden of proof in general.

**2. PARTICULAR MATTERS.**

- 1340. In general.
- 1341. Jurisdiction.
- 1342. Relationship of master and servant in general.
- 1343. Persons and employments within act.
- 1344. — In general.
- 1345. — Employments within act.
- 1346. — Employments within state or federal laws.
- 1347. — Employers within act.
- 1348. — Employees within act.
- 1349. — Independent contractors and their employees.
- 1350. Acceptance or election to come under act.
- 1351. Dependency.
- 1352. — In general.
- 1353. — Widows and widowers.
- 1354. — Children and grandchildren.
- 1355. — Parents.
- 1356. Injuries or death for which compensation may be had.
- 1357. — In general.
- 1358. — Injuries arising out of and in course of employment in general.
- 1359. — Injuries arising out of employment in general.



**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1360. — Injuries arising in course of employment in general.
- 1361. — Accidental nature of injury.
- 1362. — Accident as cause of disability or death.
- 1363. — Assaults by co-employees or third persons.
- 1364. — Diseases and internal injuries in general.
- 1365. — Particular diseases.
- 1366. — Aggravation or acceleration of previously impaired condition.
- 1367. — Hernia.
- 1368. Defenses against claims for compensation.
- 1369. — In general.
- 1370. — Misconduct of employee in general.
- 1371. — Intoxication.
- 1372. — Suicide.
- 1373. Amount and period of compensation.
- 1374. — In general.
- 1375. — Extent and duration of injury or disability.
- 1376. — Grounds for increasing, diminishing, or apportioning compensation.
- 1377. — Diminution of earning capacity, and availability of suitable work.
- 1378. — Minimizing injury.
- 1379. Proceedings for compensation.
- 1380. — In general.
- 1381. — Notice of injury.
- 1382. — Claim for compensation.

**(M) ADMISSIBILITY OF EVIDENCE.**

- 1383. In general.
- 1384. Competency, relevancy, and materiality in general.
- 1385. Hearsay.
- 1386. Employment and parties thereto.
- 1387. Acceptance or election to come under act.
- 1388. Causes or circumstances of injury, disability or death in general.
- 1389. Reports, certificates, or memoranda of accident.
- 1390. Injury arising out of and in course of employment.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1391. Injury as cause of disability or death.
- 1392. Testimony and statements of employee or claimant.
- 1393. Testimony and statements of employer.
- 1394. Testimony and statements of other employees.
- 1395. Medical testimony, statements, reports, and records.
- 1396. — In general.
- 1397. — Unsworn statements and reports.
- 1398. Verdict of coroner's jury.
- 1399. Conduct and habits of employee.
- 1400. Testimony taken by, and award and findings of, commission.
- 1401. Condition and repair of premises after accident.
- 1402. Nature and extent of disability.
- 1403. Fact and nature of previous injury or disability.
- 1404. Earnings, earning capacity, and amount of compensation.
- 1405. Dependency.

**(N) WEIGHT AND SUFFICIENCY OF EVIDENCE.****1. IN GENERAL.**

- 1406. Effect of statutory presumption.
- 1407. Credibility.
- 1408. Sufficiency in general.
- 1409. Character of proof in general.
- 1410. Testimony or statements of parties or persons injured in general.
- 1411. Hearsay evidence.
- 1412. Undisputed evidence.
- 1413. Degree of proof in general.
- 1414. Circumstantial evidence.
- 1415. Opinion evidence.
- 1416. — In general.
- 1417. — Necessity of expert evidence.
- 1418. — Credibility and conflict with other evidence.
- 1419. — Sufficiency to sustain finding in general.
- 1420. — Certainty.
- 1421. Preponderance of evidence.
- 1422. Inferences from evidence.
- 1423. Reports of employer.

**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1424. Place of contract or injury and what law governs.
- 1425. Time of accident.
- 1426. Existence of insurance contract.

**2. EMPLOYMENTS WITHIN ACTS.**

- 1427. In general.
- 1428. Employment in interstate or intrastate commerce.

**3. EMPLOYERS WITHIN ACTS.**

- 1429. In general.
- 1430. Employment by agent or employee.
- 1431. Employers of particular number of employees.
- 1432. General and special employers, and change of employers.
- 1433. Simultaneous or successive employers of same employee.
- 1434. Partnership or partner.

**4. EMPLOYEES WITHIN ACTS.**

- 1435. In general.
- 1436. Fact, manner, and basis of payment.
- 1437. Direction and control.
- 1438. Duration and termination of relation.
- 1439. Volunteers and substitutes.
- 1440. Minors.
- 1441. Casual employees in general.
- 1442. Employment in course of trade or business of employer.
- 1443. Employer and employee or other relationship in general.
- 1444. Public employees.
- 1445. Particular employees.
- 1446. — In general.
- 1447. — Salesmen, solicitors, and agents.
- 1448. — Operators of vehicles and airplanes and their assistants.
- 1449. — Mechanical and repair workers.
- 1450. — Miners, excavators, and drillers or diggers of wells.
- 1451. Independent contractors.
- 1452. — In general.
- 1453. — Tests of relationship in general.
- 1454. — Persons engaged in logging and lumbering.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1455. — Miners, excavators, well diggers or drillers, and similar work.
- 1456. — Painters, decorators, and similar workers.
- 1457. — Mechanics and repairmen in general.
- 1458. — Salesmen, solicitors, agents, collectors, and similar workers.
- 1459. — Persons erecting, repairing, or demolishing building or structure.
- 1460. — Persons engaged in hauling or in operation of vehicles.
- 1461. Employees of contractor or subcontractor.

**5. ACCEPTANCE OR ELECTION  
TO COME UNDER ACTS.**

- 1462. In general.
- 1463. Election by employer.
- 1464. Election by employee.

**6. DEPENDENCY AND RELATIONSHIP.**

- 1465. In general.
- 1466. Existence of dependents in general.
- 1467. Character and degree of proof in general.
- 1468. Relatives and members of family in general.
- 1469. — In general.
- 1470. — Surviving spouse and children.
- 1471. — Parents, brothers, and sisters.
- 1472. Husband and wife.
- 1473. — In general.
- 1474. — Existence and validity of marriage relation; common-law marriages.
- 1475. — Living together.
- 1476. — Living apart in general.
- 1477. — Nonresidents and aliens.
- 1478. Children.
- 1479. Parents and persons in loco parentis.
- 1480. — In general.
- 1481. — As affected by contributions of deceased in general.
- 1482. — Nonresidents and aliens.
- 1483. — Partial dependency.
- 1484. — Total dependency.
- 1485. Brothers and sisters.
- 1486. Grandparents and grandchildren.

**413. WORKERS' COMPENSATION****7. ACCIDENT OR INJURY AND CONSEQUENCES THEREOF.**

- 1487. Injuries arising out of and in course of employment in general.
- 1488. Injuries arising out of employment in general.
- 1489. Injuries in course of employment in general.
- 1490. Fact of injury, and accidental nature in general.
- 1491. Existence and extent of disability in general.
- 1492. Injury as cause of disability in general.
- 1493. Death from accidents in general.
- 1493.5. Suicide.
- 1494. Diseases, infections, and poisoning.
- 1495. — In general.
- 1496. — Poisoning in general.
- 1497. — Infections in general.
- 1498. — Cuts, bruises, and abrasions of skin in general.
- 1499. — Blood poisoning.
- 1500. — Inhalation of gas, fumes, or dust.
- 1501. Particular diseases.
- 1502. — In general.
- 1503. — Anthrax.
- 1504. — Cancer.
- 1505. — Tumors, abscesses, and cysts.
- 1506. — Ulcers and fistulas.
- 1507. — Skin diseases.
- 1508. — Erysipelas.
- 1509. — Diseases of the lungs and respiratory system in general.
- 1510. — Influenza.
- 1511. — Pleurisy.
- 1512. — Pneumonia.
- 1513. — Tuberculosis.
- 1514. — Apoplexy.
- 1515. — Epilepsy.
- 1516. — Paralysis.
- 1517. — Vertigo, dizziness, and fainting.
- 1518. — Tetanus.
- 1519. — Heart diseases.
- 1520. — Disease or obstruction of blood vessels.
- 1521. — Kidney diseases.
- 1522. — Diabetes.
- 1523. — Appendicitis.
- 1524. — Rheumatism; lumbago.
- 1525. — Arthritis.

**XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)**

- 1526. — Fevers in general.
- 1527. — Typhoid fever.
- 1528. — Meningitis.
- 1529.1. — Mental and emotional disability.
  - (1). In general.
  - (2). Physical injury requirement.
  - (3). Particular conditions or diseases.
  - (4). — In general.
  - (5). — Depression.
  - (6). — Post-traumatic stress disorder.
- 1530.1. Occupational diseases.
- 1530.2. — In general.
- 1530.3. — Particular diseases.
  - (1). In general.
  - (2). Lung diseases.
  - (3). Heart and cardiovascular diseases.
  - (4). Repetitive injury; cumulative trauma.
  - (5). Mental and emotional disability.
- 1531.1. Particular injuries and consequences.
- 1531.2. — In general.
- 1531.3. — Consequences of exertion in general.
- 1531.4. — Back injuries.
- 1531.5. — Head, neck, and shoulder injuries.
- 1531.6. — Injuries to extremities.
- 1531.7. — Repetitive injury; cumulative trauma.
  - (1). In general.
  - (2). Carpal tunnel syndrome.
- 1531.8. — Injuries to blood vessels; strokes and aneurysms.
- 1531.9. — Injuries to heart.
  - (1). In general.
  - (2). Physical exertion or strain.
  - (3). Mental stress.
  - (4). Police officers and firefighters.
- 1531.10. — Injuries to eyes and impairment of vision.
- 1531.11. — Injuries to ears and impairment of hearing.
- 1531.12. — Injuries to sexual organs.
- 1531.13. — Hernia.
  - (1). In general.
  - (2). Immediate descent or appearance of hernia.

**413. WORKERS' COMPENSATION**

**XVI. PROCEEDINGS TO SECURE COMPENSATION.**(Cont'd)

(3). Preexisting hernia or weakened structural condition.

(4). Death or disability resulting from hernia.

1543. Successive injuries and recurrence of disability.

1544.1. Aggravation of previously impaired condition.

1544.2. — In general.

1544.3. — Aggravation of preexisting disease, generally.

1544.4. — Necessity of accident and causal connection.

1544.5. — Effect of preexisting condition.

1544.6. — Aggravation of particular condition or disease.

(1). In general.

(2). Back.

(3). Head, neck, and shoulders.

(4). Injuries to extremities.

(5). Heart and cardiovascular conditions.

(6). Lung diseases.

(7). Arthritis.

(8). Mental and emotional disability.

1544.7. — Aggravation of prior, work-related injury.

(1). In general.

(2). Back injuries.

(3). Head, neck, and shoulder injuries.

(4). Injuries to extremities.

(5). Repetitive injury; cumulative trauma.

(6). — In general.

(7). — Carpal tunnel syndrome.

(8). Heart and cardiovascular conditions.

(9). Lung diseases.

(10). Arthritis.

(11). Mental and emotional disability.

1555. Customary acts and acts by consent, direction, or acquiescence of employer.

1556. Negligence.

1557. Violation of safety regulations by employer.

1558. Acts for personal comfort or convenience of employee.

**XVI. PROCEEDINGS TO SECURE COMPENSATION.**(Cont'd)

1559. Acts for individual purpose or benefit of employee.

1560. Deviation from employer's business.

1561. Acts for benefit of coemployee or of third person.

1562. Horseplay and practical joking.

1563. Assaults; injuries by acts of co-worker or third person.

1563.1. — In general.

1563.2. — Acts of co-worker.

1563.3. — Acts of third person.

1567. Accidental shooting or stabbing.

1568. Drowning.

1569. Storms and floods.

1570. Injuries by lightning.

1571. Sunstroke or heat prostration.

1572. Exposure to cold and wetting.

1573. Injuries before or after working hours.

1574. Going to or from work.

1575. Going to or from meals.

1576. Employee away from working place.

1577. Place of injury with reference to plant or premises of employer.

1578. — In general.

1579. — Outside workers.

1580. Explosions and fires.

1581. Injuries in operation, care, or repair of vehicles in general.

1582. Injuries by trains or cars in general.

1583. Injuries in use or operation of elevators.

1584. Injuries in operation of aircraft.

1585. Loading or unloading cars or vehicles.

1586. Injuries by insects or animals.

1587. Injuries by slipping, tripping, or falls in general.

1588. — In general.

1589. — Proof of fact of fall.

1590. — Accidental character.

1591. — Cause.

1592. — Relation to employment in general.

1593. — As cause of injury or disability in general.

1594. Injuries by objects falling or thrown.

1595. Jolts and jars.

1596. Electric shock and burns.

1597. Public employees in general.

**413. WORKERS' COMPENSATION****8. DEFENSES AGAINST CLAIM FOR INJURY.**

- 1598. In general.
- 1599. Negligence of employee and assumption of risk.
- 1600. Serious, intentional, or willful misconduct.
- 1601. Injury caused by employee's willful intention to injure another.
- 1602. Disobedience of rules, orders, and warnings in general.
- 1603. Violation of laws and regulations.
- 1604. Intoxication.
- 1605. Failure to use safety appliances.
- 1606. Intentional self-injury.
- 1607. Suicide.

**9. AMOUNT AND PERIOD OF COMPENSATION.**

- 1609.1. In general.
- 1609.2. Basis for determination of amount; computation of earnings.
- 1609.3. — In general.
- 1609.4. — Wage rates or average earnings, in general.
- 1609.5. — Weekly wage or earnings, in general.
- 1609.6. — Length of time in employment prior to injury.
- 1609.7. — Wages of employee of same class.
- 1609.8. — Part time, seasonal, or intermittent employment.
- 1609.9. — Earnings from multiple jobs or employers.
- 1609.10. — Board, lodging, and other non-monetary compensation.
- 1609.11. — Tips, bonuses, and fringe benefits.
- 1627.1. Disability benefits.
- 1627.2. — In general.
- 1627.3. — Commencement of disability or compensation; date of disability.
- 1627.4. — Duration and termination of disability in general.
- 1627.5. — Amount of benefits in general.
- 1627.6. — Temporary or permanent disability in general.
- 1627.7. — Temporary disability.
  - (1). In general.
  - (2). Particular cases.
- 1627.8. — Permanent disability.

**XVI. PROCEEDINGS TO SECURE COMPENSATION.(Cont'd)**

- (1). In general.
- (2). Particular cases.
- 1627.9. — Total or partial disability in general.
- 1627.10. — Partial disability.
  - (1). In general.
  - (2). Particular cases.
  - (3). Percentage awards.
- 1627.11. — Total disability.
  - (1). In general.
  - (2). Particular cases.
- 1627.12. — Supplemental and impaired earning benefits.
- 1627.13. — Previous impairment or multiple injuries; apportionment.
  - (1). In general.
  - (2). Successive employers or insurers.
  - (3). Multiple compensable injuries or impairments.
- 1627.14. — Maximum medical improvement.
- 1627.15. — Multiple awards for single injury.
- 1627.16. — Limitations on amount; maximum, minimum, or extended benefits.
- 1627.17. — Employment and earning capacity.
  - (1). In general.
  - (2). Impairment of earning capacity.
  - (3). Acceptance of employment or amount of wages as affecting eligibility.
  - (4). Incapacity for work or employment in general.
  - (5). Odd lot.
  - (6). Inability to work without pain.
  - (7). Light or occasional employment; accommodated work.
  - (8). Employment in same work as when injured; claimant's training and qualifications.
  - (9). Release to return to work.
  - (10). Economic conditions affecting employment.
  - (11). Efforts to obtain work; acceptance of employment.

**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- (12). Departure from position; withdrawal from workforce.
- 1646.1. Scheduled and other particular injuries.
- 1646.2. — In general.
- 1646.3. — Medical impairment; impairment ratings.
- 1646.4. — Diseases.
- 1646.5. — Effect of previous impairment on scheduled injury; apportionment.
- 1646.6. — Multiple scheduled injuries.
- 1646.7. — Injury to the body as a whole.
- 1646.8. — Muscular strains and consequences of exertion generally.
- 1646.9. — Heart, cardiovascular, and lung conditions.
- 1646.10. — Head, neck, or shoulder injuries.
- 1646.11. — Back injuries.
- 1646.12. — Hip injuries.
- 1646.13. — Loss of, or injury to, member in general.
- 1646.14. — Loss of, or injury to, leg.
- 1646.15. — Loss of, or injury to, ankle, foot, or toes.
- 1646.16. — Loss of, or injury to, arm.
- 1646.17. — Loss of, or injury to, wrist, hand, or fingers.
- 1646.18. — Eye injuries and impairment of vision.
- 1646.19. — Ear injuries and impairment of hearing.
- 1646.20. — Hernia.
- 1646.21. — Skin conditions.
- 1646.22. — Mental and emotional disability.
- 1646.23. — Previous impairment; apportionment.
- 1647.1. Other benefits.
- 1647.2. — In general.
- 1647.3. — Pain and suffering.
- 1647.4. — Disfigurement.
- 1647.5. — Rehabilitation and retraining compensation.
- 1647.6. — Compensation for death.
- 1647.7. Deductions and offsets.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1647.8. Increase or reduction of compensation.
- 1647.9. — In general.
- 1647.10. — Misconduct.
- 1647.11. — Minimizing or aggravating injury.
- (1). In general.
- (2). Refusal or neglect to submit to medical treatment.

**10. KNOWLEDGE OR NOTICE OF ACCIDENT,  
INJURY, OR DISABILITY.**

1676. In general.
1677. Excuse for failure to give, or delay in giving, notice in general.
1678. Actual knowledge in general.
1679. Knowledge of agent or representative.
1680. Prejudice from failure to give, or delay in giving, notice.

**11. CLAIM OR PETITION FOR COMPENSATION  
AND INSTITUTION OF PROCEEDINGS.**

1681. In general.
1682. Time for filing claim or instituting proceedings.
1683. Excuses for failure to make, or delay in making claim, and tolling of statute.
1684. Prejudice from delay in making, or failure to make, claim.

**(O) AFFIDAVITS AND DEPOSITIONS.**

1685. Affidavits.
1686. Discovery and depositions.  
*Privileges, see*  $\S$ 1703.5.

**(P) HEARING OR TRIAL.****1. IN GENERAL.**

1687. In general.
- 1687.5. Pretrial matters.
1688. Necessity of trial or hearing.
1689. Notice.
1690. Time, place, and adjournment.
1691. Scope and extent; matters and evidence considered.
1692. Right to open and close.
1693. View and inspection.
1694. Personal examination of claimant.

**413. WORKERS' COMPENSATION****2. PRODUCTION AND RECEPTION OF EVIDENCE  
AND EXAMINATION OF WITNESSES.**

- 1695. Production and reception of evidence.
- 1696. — In general.
- 1697. — Right to introduce.
- 1698. — Formal introduction.
- 1699. — Taking ex parte.
- 1700. — Order of proof.
- 1701. — Reopening hearing.
- 1702. — Effect of evidence admitted without objection.
- 1703. Summoning and examining witnesses.
- 1703.5. Privileges.

**3. QUESTIONS OF LAW AND FACT.**

- 1704. In general.
- 1705. Mixed questions of law and fact.
- 1706. Employments included.
- 1707. Employers within intent of acts.
- 1708. Employees within intent of acts.
- 1709. — In general.
- 1710. — Independent contractors.
- 1711. Acceptance or election to come under act.
- 1712. Dependents entitled to compensation.
- 1713. — In general.
- 1714. — Spouses living apart.
- 1715. — Extent of dependency.
- 1716. Injuries for which compensation may be had in general.
- 1717. Remote and proximate consequences.
- 1718. Arising out of and in the course of employment.
- 1719. — In general.
- 1720. — Going to or from work.
- 1721. Intoxication and serious and willful misconduct of employee.
- 1722. Amount and period of compensation.
- 1723. — In general.
- 1724. — Compensation for disability.
- 1725. — Minimizing injury.
- 1726. Proceedings to secure compensation.

**4. JURY TRIAL.**

- 1727. In general.
- 1728. Instructions.
- 1729. Verdict and findings.

**5. REFERENCE.**

- 1730. In general.
- 1731. Province of arbitrator or referee.

**6. FINDINGS OF FACT AND CONCLUSIONS  
OF LAW BY BOARD, COMMISSION, OR  
COURT.**

- 1732. Necessity.
- 1733. — In general.
- 1734. — Admitted or stipulated facts.
- 1735. — Issues not involved or presented.
- 1736. Character of finding as one of fact or law.
- 1737. Form, contents, and sufficiency.
- 1738. — In general.
- 1739. — Separate statement of findings of fact and conclusions of law.
- 1740. — Opinion or reasons.
- 1741. — Recital of evidence.
- 1742. — Conclusions or belief.
- 1743. — Definiteness and certainty.
- 1744. — Ultimate or evidentiary facts.
- 1745. Conformity to evidence.
- 1746. Conformity to issues.
- 1747. Inconsistent findings and conclusions.
- 1748. — In general.
- 1749. — Findings of fact as supporting conclusions of law.
- 1750. — General and specific findings.
- 1751. Particular facts and conclusions.
- 1752. — In general.
- 1753. — Causes and circumstances of injury.
- 1754. — Persons entitled and dependency.
- 1755. — Disability.
- 1756. — Earnings and impairment of earning capacity.
- 1757. — Employment in interstate commerce.
- 1758. — Notice of injury and claim of compensation.
- 1759. Modification and correction.
- 1760. Construction and operation.
- 1761. — In general.
- 1762. — Implied findings.
- 1763. — Effect of failure to find.
- 1764. Conclusiveness and effect.

**(Q) AWARD OR JUDGMENT.**

- 1765. In general.

**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1766. Consent judgment, decree, or award.
- 1767. Form and contents and nature and extent of relief.
- 1768. — In general.
- 1769. — Amount and period of compensation.
- 1770. — Concurrent or consecutive payments.
- 1771. — Persons liable.
- 1772. — Persons entitled.
- 1773. Time for making or rendition.
- 1774. Notice of, and proceedings for, rendition or entry.
- 1775. Record.
- 1776. Conformity to pleadings, proof, and findings.
- 1777. Modification, amendment, and correction.
- 1778. — In general.
- 1779. — Time for correction.
- 1780. Opening and vacating.
- 1781. — In general.
- 1782. — Grounds in general.
- 1783. — Fraud or mistake.
- 1784. — Time for application or proceedings.
- 1785. — Proceedings to open or vacate.
- 1786. — Effect.
- 1787. Equitable relief.
- 1788. Conclusiveness and effect.
- 1789. — In general.
- 1790. — Finality.
- 1791. — Matters concluded.
- 1792. — Persons concluded.
- 1793. — Collateral attack.

**(R) REHEARING AND NEW TRIAL.**

- 1794. Right and power to grant.
- 1795. Grounds.
- 1796. Proceedings to procure.
- 1797. — In general.
- 1798. — Time for application.
- 1799. — Notice.
- 1800. — Hearing and determination of application.
- 1801. — Vacation of order.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1802. Proceedings on rehearing or at new trial.
- 1803. Successive applications.

**(S) REVIEW BY BOARD OR COMMISSION.**

- 1804. Nature and form of remedy.
- 1805. Jurisdiction.
- 1806. Decisions reviewable.
- 1807. Right of review.
- 1808. Taking and perfecting proceedings for review.
- 1809. — In general.
- 1810. — Notice.
- 1811. — Petition, application, or other pleading.
- 1812. Record.
- 1813. Dismissal, hearing, and rehearing.
- 1814. Scope and extent of review in general.
- 1815. Trial de novo.
- 1816. — In general.
- 1817. — Issues and matters considered.
- 1818. — Evidence.
- 1819. — Trial.
- 1820. Questions of law or fact and findings.
- 1821. Determination and disposition of proceeding.

**(T) REVIEW BY COURT.****1. IN GENERAL.**

- 1822. In general.
- 1823. Certification of questions of law.
- 1824. Appeal.
- 1825. Certiorari or writ of review.
- 1826. Action to set aside award or injunction proceedings.
- 1827. Jurisdiction.
- 1828. — In general.
- 1829. — Appeal.
- 1830. — Certiorari or writ of review.
- 1831. — Action to set aside or injunction proceedings.

**2. VENUE.**

- 1832. In general.

**3. DECISIONS REVIEWABLE.**

- 1833. In general.



**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1834. On appeal.
- 1835. On certiorari or writ of review.
- 1836. In action to set aside award.

**4. RIGHT OF REVIEW.**

- 1837. Persons entitled.
- 1838. — In general.
- 1839. — Nonresidents.
- 1840. — State or state officer.
- 1841. Estoppel, waiver, or agreements affecting right.
- 1842. — In general.
- 1843. — Payment and performance of award.
- 1844. — Acceptance of payments.

**5. PRESENTATION AND RESERVATION BELOW  
OF GROUNDS OF REVIEW.**

- 1845. Necessity.
- 1846. — In general.
- 1847. — Theory of claim or defense.
- 1848. — Jurisdiction and venue.
- 1849. — Time to proceed and limitations.
- 1850. — Parties.
- 1851. — Notice of injury and claim for compensation.
- 1852. — Pleadings.
- 1853. — Trial or hearing.
- 1854. — Arbitration, reference, and proceedings thereon.
- 1855. — Evidence, depositions, and witnesses.
- 1856. — Award or judgment.
- 1857. — Proceedings for rehearing.
- 1858. Form and sufficiency.
- 1859. — In general.
- 1860. — Definiteness and certainty.
- 1861. — Objections and exceptions and rulings thereon in general.
- 1862. — Request for instructions.
- 1863. — Request for special findings.
- 1864. — Application for rehearing.
- 1865. — Application, or claim, for review.
- 1866. — Motion for new trial or in arrest of judgment.

**6. PARTIES.**

- 1867. Proper and necessary parties generally.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1868. Designation and description.
- 1869. New parties and change of parties.
- 1870. Death.
- 1871. Defects, objections, and amendment.

**7. TAKING AND PERFECTING PROCEEDINGS  
FOR REVIEW.**

- 1872. In general.
- 1873. Time for proceeding.
- 1874. — In general.
- 1875. — Prematurity.
- 1876. — When time begins to run (notice).
- 1877. — Effect of proceedings for rehearing, new trial, or correction of award.
- 1878. — Excuse for delay, and extension of time.
- 1879. — Waiver of objections.
- 1880. — Effect of delay.
- 1881. — Evidence of timely appeal; proof.
- 1882. Notice.
- 1882.1. — In general.
- 1883. — Necessity and waiver.
- 1884. — Sufficiency.
- 1885. Process or writ.
- 1886. Petition or application.
- 1887. — In general.
- 1888. — Certiorari.
- 1889. — Suit to set aside award.
- 1890. Answer or return.
- 1891. Reply.
- 1892. Necessity of bond or other security.

**8. EFFECT OF PROCEEDINGS FOR REVIEW  
AND SUPERSEDEAS OR STAY.**

- 1893. Effect of institution or perfection of proceedings for review.
- 1894. Supersedeas or stay.

**9. RECORD.**

- 1895. In general.
- 1896. Bill of exceptions.
- 1897. Abstract.
- 1898. Case.
- 1899. Agreed statement of facts.
- 1900. Transcripts.
- 1901. Transmission.
- 1902. Defects, objections, and amendment.
- 1903. Conclusiveness of record.

**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

1904. Questions presented for review.  
1905. Matters not apparent of record.

**10. ASSIGNMENTS OF ERROR AND BRIEFS.**

1906. Assignments of error.  
1907. Briefs.

**11. DISMISSAL, WITHDRAWAL, ABANDONMENT,  
HEARING, AND REHEARING.**

1908. Dismissal, withdrawal, or abandonment  
of appeal.  
1909. Submission and hearing; rehearing.

**12. SCOPE AND EXTENT OF REVIEW IN GENERAL.**

1910. In general.  
1911. Matters or evidence considered.  
1912. Questions considered.  
1913. Review when facts not found or insuffi-  
ciently found.  
1914. Trial de novo in general.  
1915. Issues and matters considered on trial  
de novo.  
1916. — In general.  
1917. — Limitation to original claim.  
1918. Pleadings on trial de novo.  
1919. — In general.  
1920. — Issues, proof, and variance.  
1921. Evidence on trial de novo.  
1922. — In general.  
1923. — Burden of proof.  
1924. — Weight and sufficiency.  
1925. Trial on trial de novo.  
1926. — In general.  
1927. — Submission of issues to jury.  
1928. — Direction of verdict and demurrer  
to evidence.  
1929. — Instructions.  
1930. — Findings.  
1931. — Verdict.  
1932. New trial after trial de novo.  
1933. Errors waived in appellate tribunal.  
1934. Parties entitled to allege error.  
1935. Presumptions and burden of showing  
error.  
1936. Discretion.  
1937. Harmless error.

**12A. QUESTIONS OF LAW OR FACT,  
FINDINGS, AND VERDICT.**

1938. In general.  
1939. Review of decision of department,  
commission, board, officer, or arbi-  
trator.  
1939.1. — In general; questions of law or  
fact.  
1939.2. — Review of fact questions in gen-  
eral.  
1939.3. — Conclusiveness of administra-  
tive findings in general.  
1939.4. — Sufficiency of evidence in sup-  
port.  
(1). In general.  
(2). "Some" or "any" evidence.  
(3). Competent evidence.  
(4). Substantial evidence.  
1939.5. — Conflicting evidence.  
1939.6. — Weight of evidence and credi-  
bility of witnesses.  
1939.7. — Inferences or conclusions from  
facts proved.  
1939.8. — Expert testimony.  
1939.9. — Findings against claimant or  
party having burden of proof.  
1939.10. — Concurrence or disagreement  
of administrative authorities.  
1939.11. — Particular findings.  
(1). In general.  
(2). Jurisdictional facts.  
(3). Employments, employers, and em-  
ployees.  
(4). Dependency and relationship.  
(5). Accident or injury and conse-  
quences thereof in general.  
(6). Cause of death.  
(7). Injuries arising out of and in  
course of employment.  
(8). Defenses against claims.  
(9). Amount and period of compensa-  
tion.  
(10). Knowledge or notice of accident,  
injury, or disability.  
(11). Claim or petition for compensa-  
tion and time for institution of  
proceedings.  
1939.12. — Occupational disease cases.  
1940. Review of court's decision in action for  
compensation.

**413. WORKERS' COMPENSATION****13. DETERMINATION AND DISPOSITION  
OF PROCEEDING.**

- 1941. In general.
- 1942. Rendering final or independent judgment.
- 1943. Form and contents of judgment or decree.
- 1944. Affirmance.
- 1945. Modification.
- 1946. Reversal.
- 1947. Annulment, vacation, and setting aside of award.
- 1948. Dismissal or nonsuit of cause.
- 1949. Remand in general.
- 1950. Instructions on remand.
- 1951. Further proceedings before board, commission, or trial court.
- 1952. Amendment, modification, or setting aside of appellate decision, and collateral attack.
- 1953. Successive appeals.

**14. PROCEEDINGS FOR FURTHER REVIEW.**

- 1954. Nature and form of remedy.
- 1955. Jurisdiction.
- 1956. Decisions reviewable.
- 1957. Right of review.
- 1958. Presentation and reservation below of grounds for review.
- 1959. Parties.
- 1960. Taking and perfecting proceedings for review.
- 1961. Assignment of error.
- 1962. Record.
- 1963. Dismissal of appeal.
- 1964. Scope and extent of review.
- 1965. Parties entitled to allege error.
- 1966. Presumptions.
- 1967. Discretion of lower court.
- 1968. Harmless error.
  - (1). In general.
  - (2). Rulings as to evidence in general.
  - (3). Admission of evidence.
  - (4). Exclusion of evidence.
  - (5). Argument and conduct of counsel.
  - (6). Submission of issues to jury.
  - (7). Instructions.
  - (8). Findings, award, or judgment.
- 1969. Questions of law or fact, findings, and verdict.

**XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1970. Determination and disposition of cause.
- 1971. — In general.
- 1972. — Affirmance.
- 1973. — Modification.
- 1974. — Reversal.
- 1975. — Remand.
- 1976. — New trial.
- 1977. Rehearing.

**15. LIABILITY ON BONDS AND SECURITIES.**

- 1978. In general.
- 1979. Determination of liability.

**(U) COSTS AND ATTORNEY FEES.****1. IN GENERAL.**

- 1980.1. In general.
- 1980.2. Discretion.
- 1980.3. Frivolity or bad faith; sanctions.
- 1980.4. Particular cases in general.
- 1980.5. Costs recoverable.
- 1980.6. Amount.
- 1980.7. Costs on appeal or proceedings to set aside award.

**2. ATTORNEY FEES.**

- 1980.8. In general.
- 1980.9. Discretion.
- 1980.10. Particular cases in general.
- 1980.11. Grounds for award of fees; factors considered.
- 1980.12. — In general.
- 1980.13. — Result or outcome of proceedings.
- 1980.14. — Bad faith; reasonableness of employer's or insurer's conduct.
- 1980.15. — Effect of claimant's conduct or misconduct.
- 1980.16. Amount.
- 1980.17. Fees on appeal or proceedings to set aside award.
- 1980.18. Payment and commutation.
- 1980.19. Lien.

**3. PROCEEDINGS.**

- 1980.20. In general.
- 1980.21. Evidence.
- 1980.22. — In general.

**413. WORKERS' COMPENSATION****XVI. PROCEEDINGS TO SECURE  
COMPENSATION.(Cont'd)**

- 1980.23. — Weight and sufficiency.
- 1980.24. — Presumptions and burden of proof.
- 1980.25. Hearing.
- 1980.26. Questions of law or fact.
- 1980.27. Review.
- 1980.28. — In general.
- 1980.29. — Standard of review.

**XVII. INCREASE, DIMINUTION, TERMINATION,  
REINSTATEMENT, OR ADDITIONAL  
AWARD OF DISABILITY COMPENSATION.****(A) AWARDS GENERALLY.****1. ADJUSTMENT OR TERMINATION  
OF COMPENSATION.**

- 1990. In general.
- 1991. Statutory regulation.
- 1992. Awards, orders, or findings which may be altered or set aside.
- 1993. — In general.
- 1994. — Period of compensation.
- 1995. — Denial or termination of compensation.
- 1996. — Previously reviewed or modified award.
- 1997. — Judgments.
- 1998. Power and jurisdiction.
- 1999. — In general.
- 2000. — Retroactive orders.
- 2001. Conclusiveness of original award or judgment.
- 2002. Necessity and sufficiency of grounds.
- 2003. — In general.
- 2004. — Good cause.
- 2005. — Change of condition in general.
- 2006. — What constitutes change of condition.
- 2007. — Injuries not included or considered in original award.
- 2008. — Subsequently ascertainable disability of another type (permanent, partial, or total).
- 2009. — Increase of disability.
- 2010. — Termination or decrease of disability.
- 2011. — Recurrence of disability.
- 2012. — Diminution or increase of earnings.

**XVII. INCREASE, DIMINUTION, TERMINATION,  
REINSTATEMENT, OR ADDITIONAL  
AWARD OF DISABILITY COMPENSA-  
TION.(Cont'd)**

- 2013. Nature and form of proceedings.
- 2014. Objections to proceedings, and waiver.
- 2015. Time for application and limitations.
- 2016. — In general.
- 2017. — Permanent partial or total disability subsequently ascertainable.
- 2018. — Other injuries in same accident not previously compensated.
- 2019. — Reclassification.
- 2020. Conditions precedent in general.
- 2021. Notice of accident, application, trial, or hearing.
- 2022. Persons entitled to apply and parties to application.
- 2023. Pleading.
- 2024. — In general.
- 2025. — Issues, proof, and variance.
- 2026. Burden of proof.
- 2027. Presumptions.
- 2028. Admissibility of evidence.
- 2029. Weight and sufficiency of evidence.
- 2030. — In general.
- 2031. — Hip, leg, and foot injuries.
- 2032. — Shoulder, arm, hand, and finger injuries.
- 2033. — Back and spine injuries.
- 2034. — Eye injuries.
- 2035. — Head injuries.
- 2036. — Hernia or rupture.
- 2037. Dismissal before hearing.
- 2038. Hearing or trial.
- 2039. — In general.
- 2040. — Scope and extent of inquiry.
- 2041. — Production and reception of evidence.
- 2042. — Questions of law or fact.
- 2043. — Findings.
- 2044. Stay of proceedings.
- 2045. Determination or award.
- 2046. — In general.
- 2047. — Conformity to petition or application.
- 2048. — Conformity to evidence and findings.
- 2049. — Relief granted.

**413. WORKERS' COMPENSATION****XVII. INCREASE, DIMINUTION, TERMINATION, REINSTATEMENT, OR ADDITIONAL AWARD OF DISABILITY COMPENSATION.(Cont'd)**

2050. — Conclusiveness and effect.  
 2051. Rehearing.

**2. REVIEW.**

2052. In general.  
 2053. Jurisdiction.  
 2054. Decisions and orders reviewable.  
 2055. Presentation and reservation below of grounds for review.  
 2056. Time for taking and perfecting proceeding for review.  
 2057. Record.  
 2058. Evidence and matters considered.  
 2059. Presumptions.  
 2060. Matters of discretion.  
 2061. Questions of fact and sufficiency of evidence.  
 2062. Harmless error.  
 2063. Trial de novo.  
 2064. Determination and disposition.

**(B) AGREEMENTS AND SETTLEMENTS.**

2065. Right and power to modify or set aside.  
 2066. — In general.  
 2067. — Conclusiveness of original claim or award.  
 2068. — What agreements or settlements are reviewable.  
 2069. — Effect of satisfaction, receipt, or release.  
 2070. — Effect of nature of disability.  
 2071. Persons entitled to relief and jurisdiction.  
 2072. Nature and form of proceedings.  
 2073. Time for application and limitations.  
 2074. Conditions precedent; notice.  
 2075. Application.  
 2076. Evidence.  
 2077. Hearing or trial, and determination.  
 2078. Rehearing.  
 2079. Review.

**XVIII. OFFENSES AND PENALTIES.**

2080. Offenses and responsibility therefor.  
 2081. Enforcement.

**XIX. EMPLOYER'S REPORT OF ACCIDENT AND NOTICE OF DEATH TO BENEFICIARIES.**

2082. Report of accidents.  
 2082.5. Records of accidents or injuries.  
 2083. Notice of death to beneficiaries.

**XX. EFFECT OF ACT ON OTHER STATUTORY OR COMMON-LAW RIGHTS OF ACTION AND DEFENSES.****(A) BETWEEN EMPLOYER AND EMPLOYEE.****1. EXCLUSIVENESS OF REMEDIES AFFORDED BY ACTS.**

2084. In general.  
 2085. Federal acts.  
 2086. Effect of municipal pensions or compensation.  
 2087. Failure to furnish, or negligence in furnishing medical or surgical treatment.  
 2088. Matters not within scope of acts in general.  
 2089. Persons and employments not within acts.  
 2090. Injuries not within acts.  
 2091. Diseases not within acts.  
 2092. Failure to comply with lawful requirements.  
 2093. Willful or deliberate act or negligence.  
 2094. Gross negligence.  
 2095. Failure to install or maintain safety devices.  
 2096. Violation of safety regulations.  
 2097. Violation of child labor laws.  
 2098. Rejection of act.  
 2099. Failure to comply with act.  
 2100. Failure to provide insurance or to secure compensation.  
 2101. Failure to give notice.  
 2102. Failure to pay compensation.

**2. ELECTION AND WAIVER OF REMEDIES.**

2103. In general.  
 2104. Election to take compensation.  
 2105. — In general.  
 2106. — Proceedings to obtain, and award of compensation.  
 2107. — Acceptance of payments.  
 2108. — Right of infant to sue at law after election to take compensation.

**413. WORKERS' COMPENSATION****XX. EFFECT OF ACT ON OTHER STATUTORY  
OR COMMON-LAW RIGHTS OF ACTION  
AND DEFENSES.(Cont'd)**

2109. Right to sue statutory employer at law after election to take compensation under statute.

**3. DEFENSES; ABROGATION OR MODIFICATION  
OF COMMON-LAW DEFENSES.**

2110. In general.  
2111. Contractual assumption of risk.  
2112. Reduction of damages for contributory negligence; comparative negligence.  
2113. Negligence of employee as sole cause of injury.  
2114. Failure of employee to elect to come under act.  
2115. Persons and employments not within acts.  
2116. Simple tool doctrine.  
2117. Willful act or misconduct of employee.

**4. NEGLIGENCE OF EMPLOYER AND  
MEASURE OF DAMAGES.**

2118. Negligence of employer as essential to recovery.  
2119. — In general.  
2120. — Statutory presumption of negligence.  
2121. Limitation of recovery or measure of damages.

**5. ACTIONS.**

2122. In general.  
2123. Declaration, petition, or complaint.  
2124. — In general.  
2125. — Exceptions from act.  
2126. — Election not to come under act.  
2127. — Failure to comply with act.  
2128. — Negligence.  
2129. Plea, answer, or affidavit of defense.  
2130. Reply.  
2131. Amended and supplemental pleadings.  
2132. Demurrer or exception.  
2133. Issues, proof, and variance.  
2134. Presumptions and burden of proof.  
2135. Admissibility of evidence.  
2136. Weight and sufficiency of evidence.  
2137. Trial in general.  
2138. Questions for jury.  
2139. Instructions.

**XX. EFFECT OF ACT ON OTHER STATUTORY  
OR COMMON-LAW RIGHTS OF ACTION  
AND DEFENSES.(Cont'd)**

2140. Verdict and findings.  
2141. Review.

**(B) ACTION BY THIRD PERSON  
AGAINST EMPLOYER.****1. IN GENERAL.**

2142. In general.  
2142.10. Indemnity or contribution.  
2142.11. — In general.  
2142.15. — Contribution.  
2142.20. — Indemnity in general.  
2142.25. — Indemnity, contractual.  
2142.30. — Longshoremen or seamen, injuries to.  
2142.35. — Products liability claims.  
2142.40. — Comparative fault; apportionment of damages.  
2142.50. Actions by dependents, representatives, or survivors.  
2142.51. — In general.  
2143. — Action by parent for injury to child.  
2144. — Action by spouse or child of injured employee.

**2. ACTION FOR DEATH BY WRONGFUL ACT.**

2145. In general.  
2146. Death of minor.  
2147. Action by, or for benefit of, person not entitled to compensation.  
2148. Employer's nonacceptance of, or non-compliance with, act.  
2149. Death resulting from willful act or omission or gross negligence.  
2150. Option, election, waiver, or estoppel.  
2151. Necessity for tort chargeable to employer.  
2152. Defenses; abrogation of common law defenses.  
2153. Effect of award, judgment, or finding in compensation proceeding.  
2154. Procedure.  
2154.1. — In general.  
2155. — Pleading.  
2156. — Evidence.  
2157. — Trial, judgment, and review.

**413. WORKERS' COMPENSATION****(C) ACTION AGAINST THIRD PERSONS  
IN GENERAL FOR EMPLOYEE'S  
INJURY OR DEATH.****1. RIGHT OF ACTION OF EMPLOYEE OR  
REPRESENTATIVE GENERALLY.**

- 2158. In general.
- 2159. Relation of parties to compensation act and occupations covered thereby.
- 2160. What persons liable as third persons.
- 2161. — In general.
- 2162. — Employer as third person.
- 2163. — Lessor of property.
- 2164. — Principal employer or employer of injured person.
- 2165. — General, principal, or original contractor contracting with employer of injured person.
- 2166. — Subcontractor contracting with employer of injured person.
- 2167. — Subcontractor injuring employee of another subcontractor.
- 2168.1. — Agents of employer of injured person.
  - (1). In general.
  - (2). Co-workers.
  - (3). Supervisors; managers.
  - (4). Officers.
- 2169. — Vessel.
- 2170. Liability of third person dependent on place of injury.

**2. ELECTION OF REMEDIES.**

- 2171. In general.
- 2172. Limitation of effect of election to cases of furtherance of common enterprise or accomplishment of same or related purposes.
- 2173. Election by particular person in case of death by wrongful act (dependents, widow, representatives).
- 2174. Form and requisites of election of compensation.
- 2175. — In general.
- 2176. — Notice of election.
- 2177. — Agreement, settlement, or release.
- 2178. — Making or filing claim or prosecuting compensation proceedings.
- 2179. — Award of compensation.
- 2180. — Accepting payment in general.
- 2181. — Acceptance of payment in cases of death of employee.

**XX. EFFECT OF ACT ON OTHER STATUTORY  
OR COMMON-LAW RIGHTS OF ACTION  
AND DEFENSES.(Cont'd)**

- 2182. — Acceptance of payment under foreign statute.
- 2183. — Accepting loans, advances, or gifts.
- 2184. — Accepting hospital, medical, or nursing expenses.
- 2185. Invalidity and avoidance of election; reinstatement or restoration of right to sue.
- 2186. Effect on employee's right to sue of employer's or insurer's failure to sue, or permitting employee to sue.
- 2187. Evidence and questions of law or fact as to election.

**3. RIGHT OF EMPLOYER OR INSURER TO REMEDY  
OF EMPLOYEE OR EMPLOYEE'S  
REPRESENTATIVE.**

- 2188. In general.
- 2189. Subrogation or assignment in general.
- 2190. Right of insurer to remedy against third person or to reimbursement in general.
- 2191. Subrogation of or assignment to insurer.
- 2192. Rights as to cause of action based on employee's death.
- 2193. — In general.
- 2194. — Rights of insurer.
- 2195. Exclusive or concurrent right as between employer or insurers and employee or dependents to sue and recover.
- 2196. Necessity, sufficiency, and validity of claim for compensation.
- 2197. Necessity and sufficiency of award of, agreement for, or payment of, compensation.
- 2198. Notice by employer to employee.
- 2199. Notice by employer to tort-feasor.
- 2200. Persons liable as third persons or persons other than employers.
- 2201. Liability of third person to employee or dependents and succession to right of employee or dependents.
- 2202. — In general.
- 2203. — Settlement or release or attempted settlement as admission of liability.

**413. WORKERS' COMPENSATION****XX. EFFECT OF ACT ON OTHER STATUTORY  
OR COMMON-LAW RIGHTS OF ACTION  
AND DEFENSES.(Cont'd)**

2204. Assignment by employer or insurer.  
2205. Waiver or loss by employer or insurer  
of right to sue.

**4. DEFENSES.**

2206. To employee's right of action.  
2207. — In general.  
2208. — Settlement or release by employer  
or insurer.  
2209. To employer's or insurer's right of ac-  
tion.  
2210. — In general.  
2211. — Employee's contributory negli-  
gence or assumption of risk.  
2212. — Negligence, wrong, or estoppel of  
employer.  
2213. — Settlement or release by employ-  
ee or personal representative.  
2214. — Employee's recovery of damages  
against third party as bar to employ-  
er's or insurer's action.

**5. ACTIONS AND PROCEEDINGS.**

2215. In general.  
2216. Time to sue, successive actions, and  
limitations.  
2216.5. Computation of period of limitations.  
2217. Abatement and revival.  
2218. Parties.  
2219. — In general.  
2220. — Action in name of employer or  
insurer.  
2221. — Action in name of employee, de-  
pendents, or personal representative.  
2222. — Action in name of state.  
2223. — Proper and necessary parties.  
2224. — Joinder.  
2225. — New parties, intervention, and  
substitution.  
2226. Pleading.  
2227. — In general.  
2228. — Declaration, complaint, or peti-  
tion.  
2229. — Plea or answer.  
2230. — Verification.  
2231. — Issues, proof, and variance.  
2232. Evidence.

**XX. EFFECT OF ACT ON OTHER STATUTORY  
OR COMMON-LAW RIGHTS OF ACTION  
AND DEFENSES.(Cont'd)**

- 2232.1. — In general.  
2233. — Presumptions and burden of  
proof.  
2234. — Admissibility.  
2235. — Weight and sufficiency.  
2236. Trial.  
2237. — In general.  
2238. — Instructions.  
2239. — Questions of law or fact.  
2240. Judgment and relief.  
2241. New trial.  
2242. Appeal and error.

**6. AMOUNT AND ITEMS OF RECOVERY.**

2243. Action by employee, dependents, or  
personal representative.  
2244. Action by or on behalf of employer or  
insurer.  
2245. — In general.  
2246. — Medical, nursing, hospital, and  
burial expenses.  
2247. — Expenses of investigation and liti-  
gation; attorney fees.

**7. RIGHT TO PROCEEDS OF ACTION  
OR SETTLEMENT.**

2248. In general.  
2249. Rights of employee or dependent.  
2250. Rights of employer or insurer.  
2251. — In general.  
2252. — Lien of employer or insurer.

**(D) ACTION AGAINST PHYSICIAN OR  
SURGEON FOR MALPRACTICE.**

2253. Rights of employee or his dependents.  
2254. Rights of employer or insurer as subro-  
gee or transferee.

**414. ZONING AND PLANNING****SUBJECTS INCLUDED**

Regulations of general application by local or  
regional bodies, limiting the long-term use  
of land



**414. ZONING AND PLANNING**

Zoning regulations dividing municipalities and other areas into districts and prescribing or limiting the construction or use of buildings and structures therein

The purpose, validity, construction, operation, modification, amendment, and repeal of such regulations

Nature, source and scope of the regulatory power and the manner of its exercise

Nonconforming uses predating zoning scheme

Regulation of land subdivision and development

Granting of zoning permits, approvals, variances, and exceptions

Administrative and judicial review of zoning regulations and proceedings

Enforcement of zoning regulations, including injunctions, fines, and criminal penalties

Appointment, tenure, powers, duties, and liabilities of zoning boards and officials

**SUBJECTS EXCLUDED AND COVERED  
BY OTHER TOPICS**

Maps and plans promulgated for the limited purpose of defining streets and lot lines, see MUNICIPAL CORPORATIONS and other government topics

Building codes establishing safety and construction standards, see HEALTH

Licenses to operate a business or practice a profession, see LICENSES and other particular topics

Federal or statewide environmental regulations, see ENVIRONMENTAL LAW

Historical preservation, regulations affecting, see ENVIRONMENTAL LAW

Private restrictions or covenants, see COVENANTS

Signs and billboards along highways, see HIGHWAYS

Non-locational mining regulation, see MINES AND MINERALS

I. IN GENERAL, ⚭1000–1034.

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(B) PARTICULAR MATTERS, ⚭1065–1124.

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III. MODIFICATION OR AMENDMENT; REZONING—Cont'd

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1. IN GENERAL, ⚭1235–1284.

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IX. VARIANCES AND EXCEPTIONS, ⚭1465–1569.

(A) IN GENERAL, ⚭1465–1534.

(B) PROCEEDINGS FOR VARIANCES AND EXCEPTIONS, ⚭1535–1564.

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(B) PROCEEDINGS, ⚭1598–1619.

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4. QUESTIONS OF FACT, ⚭1695–1709.

(D) DETERMINATION, ⚭1710–1734.

(E) FURTHER REVIEW, ⚭1735–1764.

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**I. IN GENERAL.**

1000. Nature in general.

**414. ZONING AND PLANNING****I. IN GENERAL.**(Cont'd)

- 1001. Zoning and planning distinguished.
- 1002. Purpose.
- 1003. Power in general.
- 1004. Zoning power in general.
- 1005. Source and scope of power.
- 1006. — In general.
- 1007. — Police power.
- 1008. Constitutional and statutory provisions.
- 1009. — In general.
- 1010. — Validity of statutes.
- 1011. — Construction of statutes in general.
- 1012. — Retroactive operation.
- 1013. Matters subject to regulation.
- 1014. — In general.
- 1015. — Maps, plats, or plans; subdivisions.
- 1016. Factors considered.
- 1017. Who may exercise power.
- 1018. Regional or interstate agencies.
- 1019. Concurrent or conflicting regulations; preemption.
- 1020. — In general.
- 1021. — Environmental regulations and considerations.
- 1022. — Agriculture, farming, and rural uses.
- 1023. — Aviation and airports.
- 1024. — Handicapped and disabled individuals.
- 1025. — Liquor regulation.
- 1026. — Maps, plats, or plans; subdivisions.
- 1027. — Mining and minerals; sand and gravel.
- 1028. — Mobile homes; trailer parks.
- 1029. — Signs and billboards.
- 1030. — Telecommunications uses.
- 1031. — Trees, forests, and logging.
- 1032. — Water-related uses.
- 1033. — Other particular cases.

**II. VALIDITY OF ZONING REGULATIONS.****(A) IN GENERAL.**

*Certainty, definiteness, vagueness, and overbreadth, see CONSTITUTIONAL LAW.*

- 1035. Validity of regulations in general.
- 1036. Reasonableness in general.

**II. VALIDITY OF ZONING REGULATIONS.**(Cont'd)

- 1037. Temporary or emergency regulation.
- 1038. Matters affecting validity in general.
- 1039. Police power, relation to.
- 1040. Public health, safety, morals, or general welfare.
- 1042. Conformity to enabling statute.
- 1043. Comprehensive or general plan, validity.
- 1044. Conformity of regulations to comprehensive or general plan.
- 1045. Zoning by districts.
- 1046. Boundary lines.
- 1047. Propriety of classification and uniformity of operation in general.
- 1048. Discrimination.
- 1049. Spot zoning.
- 1050. Aesthetic considerations.
- 1051. Environmental or ecological considerations.
- 1052. Fire and traffic hazards.
- 1053. Hardship, loss, or benefit to particular persons.
- 1054. Effect on property value.
- 1055. Deprivation of property.
- 1056. Delegation of power in general.
- 1057. Standards governing conduct of administrative officials.
- 1058. Consent of property owners, requirement of.
- 1059. Change of conditions; future developments.
- 1060. Territorial limitations.
- 1061. Effect of partial invalidity; severability.
- 1062. — In general.
- 1063. — Particular regulations.

**(B) PARTICULAR MATTERS.**

- 1065. In general.
- 1066. Architectural or structural designs.
- 1067. — In general.
- 1068. — Area and frontage requirements.
- 1069. — Building or setback lines.
- 1070. — Height of buildings or structures.
- 1071. — One-family, two-family, or multiple dwellings.
- 1072. Circumstances affecting validity of use regulation.

**414. ZONING AND PLANNING****II. VALIDITY OF ZONING  
REGULATIONS.(Cont'd)**

- 1073. Complete prohibition of use within municipality.
- 1074. Residence districts.
- 1075. — In general.
- 1076. — Uses permitted or excluded.
- 1077. — Validity of districting.
- 1078. — Zoning entire municipality as residential.
- 1079. Business, commercial, and industrial districts and uses in general.
- 1080. Agricultural uses, woodlands and rural zoning.
- 1081. Animals; stables and kennels.
- 1082. Automobile-related uses.
- 1083. — In general.
- 1084. — Streets.
- 1085. — Sales and service.
- 1086. — Garages and parking.
- 1087. — Distance from particular structures or uses.
- 1088. Aviation and airports.
- 1089. Churches and religious uses.
- 1090. Density of population.
- 1091. Entertainment and recreation; theaters.
- 1092. Fences and hedges.
- 1093. Hospitals, clinics, and other health-related facilities.
- 1094. — In general.
- 1095. — Abortion and birth control facilities.
- 1096. — Mental health facilities.
- 1097. Hotels, lodging, and short-term rentals.
- 1098. Landfills and waste disposal; junkyards.
- 1099. Mining and minerals; sand and gravel.
- 1100. Mobile homes; trailer parks.
- 1101. Mortuaries, cemeteries, and mausoleums.
- 1102. Nonconforming uses.
- 1103. Permits, certificates, and approvals.
- 1104. — In general.
- 1105. — Maps, plats, and plans; subdivisions.
- 1106. Prisons, jails, and rehabilitative institutions.
- 1107. Public and low-income housing.
- 1108. Residential facilities and daycare.
- 1109. Restaurants and food services.

**II. VALIDITY OF ZONING  
REGULATIONS.(Cont'd)**

- 1110. Schools and education.
- 1111. Signs and billboards.
- 1112. Sexually-oriented businesses; nudity.
- 1113. Stores and sales.
- 1114. — In general.
- 1115. — Shopping centers and malls.
- 1116. — Alcoholic beverages.
- 1117. — Firearms.
- 1118. Telecommunications towers and facilities.
- 1119. Variances and exceptions.
- 1120. Water-related uses and regulations.
- 1121. Moratorium regulations.
- 1122. Other particular uses.

**(C) PROCEDURAL REQUIREMENTS.**

- 1125. In general.
- 1126. Map.
- 1127. Report or recommendation of board or officer.
- 1128. Notice and hearing.
- 1129. — In general.
- 1130. — Sufficiency of notice or publication.
- 1131. — Hearing or meeting in general.
- 1132. — Access; open meetings.
- 1133. Enactment and voting.
- 1134. — In general.
- 1135. — Bias and disqualification.
- 1136. — Number of votes required.
- 1137. Filing, publication, and posting; minutes and findings.
- 1138. Approval of voters or property owners; referendum and initiative.

**III. MODIFICATION OR AMENDMENT;  
REZONING.****(A) IN GENERAL.**

- 1140. Power to modify or amend in general.
- 1141. Who may exercise power.
- 1142. Statutory provisions and limitations.
- 1143. Circumstances affecting validity of amendment in general.
- 1144. Reasonableness.
- 1145. Uniformity and discrimination.
- 1146. Public interest and need; general welfare.

**414. ZONING AND PLANNING****III. MODIFICATION OR AMENDMENT;  
REZONING.(Cont'd)**

- 1147. Mistake in original zoning.
- 1148. Changed conditions.
- 1149. Comprehensive or general plan.
- 1150. — In general.
- 1151. — Conformity of change to plan.
- 1152. — Change to plan itself, in general.
- 1153. Contracts for amendments; conditions.
- 1154. Rights of objecting owners; continuity of regulation.
- 1155. Spot zoning.
- 1156. Hardship, loss, or benefits; property values.
- 1157. Traffic conditions.
- 1158. Particular uses or restrictions.
- 1159. — In general.
- 1160. — Changes to comprehensive or general plan.
- 1161. — Changes within residential districts in general.
  - (1). In general.
  - (2). Change from single-family to multiple dwelling.
  - (3). Change from multiple dwelling to single-family.
  - (4). Trailer parks and mobile homes.
- 1162. — Changes within business, commercial, or industrial districts in general.
- 1163. — Change from residential use to business, commercial, or industrial use.
- 1164. — Change from business, commercial, or industrial use to residential use.
- 1165. — Automobile-related uses; service, sales, parking.
- 1166. — Shopping centers and malls.
- 1167. — Agricultural uses, woodlands and rural zoning.
- 1168. — Mining and minerals; sand and gravel.
- 1169. — Sexually-oriented businesses; nudity.
- 1170. — Telecommunications towers and facilities.

**(B) PROCEEDINGS TO MODIFY OR AMEND.**

- 1175. In general.

**III. MODIFICATION OR AMENDMENT;  
REZONING.(Cont'd)**

- 1176. Petition or application; persons entitled to apply.
- 1177. Map.
- 1178. Report or recommendation of board or officer.
- 1179. Notice and hearing.
- 1180. — In general.
- 1181. — Sufficiency of notice or publication.
- 1182. — Hearing or meeting in general.
- 1183. — Access; open meetings.
- 1184. Objections and protests.
- 1185. Enactment and voting.
- 1186. — In general.
- 1187. — Bias and disqualification.
- 1188. — Number of votes required.
- 1189. Filing, publication, and posting; minutes and findings.
- 1190. Approval of voters or property owners; referendum and initiative.

**IV. REPEAL OF REGULATIONS.**

- 1195. In general.
- 1196. Manner of effecting repeal in general.
- 1197. Repeal by implication.

**V. CONSTRUCTION, OPERATION,  
AND EFFECT.****(A) IN GENERAL.**

- 1200. In general.
- 1201. As question of law.
- 1202. Applicability of general statutory construction principles.
- 1203. Strict or liberal construction in general.
- 1204. Free or unrestricted use of property.
- 1205. Intention and purpose of enacting body.
- 1206. Meaning of language.
- 1207. — In general.
- 1208. — Ambiguity.
- 1209. Ordinance as a whole, and intrinsic aids.
- 1210. Presumptions.
- 1211. Extrinsic aids to construction.
- 1212. — In general.
- 1213. — Construction by board or agency.
- 1214. Operation and effect in general.

**414. ZONING AND PLANNING****V. CONSTRUCTION, OPERATION,  
AND EFFECT.(Cont'd)**

- 1215. Time of taking effect; retroactive operation.
- 1216. Applicability to persons or places.
- 1217. — In general.
- 1218. — Government and related entities.
- 1219. — Public utilities.
- 1220. Comprehensive or general plan.

**(B) ARCHITECTURAL AND STRUCTURAL DESIGNS.**

- 1225. In general.
- 1226. Building or setback lines.
- 1227. Height of buildings or structures.
- 1228. Area, frontage, and yard requirements.
- 1229. One-family, two-family, or multiple dwellings.

**(C) USES AND USE DISTRICTS.****1. IN GENERAL.**

- 1235. Uses in general.
- 1236. Boundaries of districts.
- 1237. Residential districts.
- 1238. — In general.
- 1239. — Apartment house districts.
- 1240. Business districts and uses in general.
- 1241. Commercial districts and uses in general.
- 1242. Industrial districts and uses in general.
- 1243. Agricultural uses, woodlands and rural zoning.
- 1244. Animals; stables and kennels.
- 1245. Automobile-related uses.
- 1246. — In general.
- 1247. — Sales and service.
- 1248. — Garages and parking.
- 1249. — Distance from particular structures or uses.
- 1250. Aviation and airports.
- 1251. Churches and religious uses.
- 1252. Clubs, fraternities, and sororities.
- 1253. Entertainment and recreation; theaters.
- 1254. Fences and hedges.
- 1255. Hospitals, clinics, and other health-related facilities.
- 1256. — In general.
- 1257. — Abortion and birth control facilities.

**V. CONSTRUCTION, OPERATION,  
AND EFFECT.(Cont'd)**

- 1258. — Mental health facilities.
- 1259. Hotels, lodging, and short-term rentals.
- 1260. Landfills and waste disposal; junkyards.
- 1261. Manufacturing.
- 1262. Maps, plats, and plans; subdivision regulations.
- 1263. Mining and minerals; sand and gravel.
- 1264. Mobile homes; trailer parks.
- 1265. Mortuaries, cemeteries, and mausoleums.
- 1266. Prisons, jails, and rehabilitative institutions.
- 1267. Public and low-income housing.
- 1268. Residential facilities and daycare.
- 1269. Restaurants and food services.
- 1270. Schools and education.
- 1271. Signs and billboards.
- 1272. Sexually-oriented businesses; nudity.
- 1273. Stores and sales.
- 1274. — In general.
- 1275. — Shopping centers and malls.
- 1276. — Alcoholic beverages.
- 1277. — Firearms.
- 1278. Telecommunications towers and facilities.
- 1279. Warehousing and storage.
- 1280. Water-related uses and regulations; flooding and wetlands.
- 1281. Moratorium regulations.
- 1282. Other particular terms and uses.

**2. ACCESSORY USES AND BUILDINGS.**

- 1285. Accessory uses in general.
- 1286. Particular accessory uses.
- 1287. Parking lots.
- 1288. Residence, accessory uses.
- 1289. — In general.
- 1290. — Artists and professionals.
- 1291. — Home occupations.
- 1292. Accessory buildings.
- 1293. — In general.
- 1294. — Garages.

**VI. NONCONFORMING USES.**

- 1300. In general.
- 1301. Particular uses or structures as nonconforming.

**414. ZONING AND PLANNING****VI. NONCONFORMING USES.(Cont'd)**

- 1302. Existence of use in general.
- 1303. Contemplated or intended use.
- 1304. Building or use in course of construction.
- 1305. Legality or illegality of use.
- 1306. Continuance or change of use in general.
- 1307. Particular cases involving continuance or change of use.
- 1308. Enlargement or extension of use.
- 1309. — In general.
- 1310. — Area of use.
- 1311. — Increase in amount or intensity of use.
- 1312. Use of new instrumentalities.
- 1313. Repair, alteration, or reconstruction of buildings or structures.
- 1314. — In general.
- 1315. — New buildings or structures.
- 1316. — Restoration and repair of damaged or destroyed structure.
- 1317. Discontinuance or abandonment.
- 1318. — In general.
- 1319. — Cessation of use.
- 1320. — Change of use.

**VII. ADMINISTRATION IN GENERAL.**

- 1325. Boards and officers in general.
- 1326. — In general.
- 1327. — Appointment or election.
- 1328. — Term of office; vacancies.
- 1329. — Compensation and benefits.
- 1330. — Resignation, suspension, or removal.
- 1331. — Duties in general.
- 1332. — Liabilities.
  - (1). In general.
  - (2). Tort and common law liability.
  - (3). Statutory or constitutional liability.
  - (4). Criminal liability.
  - (5). Immunity.
- 1333. — Power and authority.
  - (1). In general.
  - (2). Discretion in general.
  - (3). Legislative, administrative, judicial, or quasi-judicial power.
- 1334. Rules and regulations.

**VII. ADMINISTRATION IN GENERAL.(Cont'd)**

- 1335. Proceedings in general.
- 1336. — In general.
- 1337. — Jurisdiction.
- 1338. — Parties and standing.
- 1339. — Notice and hearing.
  - (1). In general.
  - (2). Notice, appearance and pleading.
  - (3). Hearings and meetings in general.
  - (4). Evidence.
  - (5). Access; open meetings.
- 1340. — Determination.
  - (1). In general.
  - (2). Voting; bias and disqualification.
  - (3). Findings, reasons, and record.
  - (4). Conclusiveness and collateral attack.
- 1341. — Costs.
- 1342. — Rehearing and reconsideration.
- 1343. — Administrative review.

**VIII. PERMITS, CERTIFICATES, AND APPROVALS.****(A) IN GENERAL.**

- 1345. Nature and necessity in general.
- 1346. Nonconforming use.
- 1347. Power to grant.
- 1348. — In general.
- 1349. — Nature of power.
- 1350. Right to permission, and discretion.
- 1351. — In general.
- 1352. — Change of regulations as affecting right.
- 1353. Estoppel to claim or oppose.
- 1354. Grounds for grant or denial in general.
- 1355. Conditions attached to permission in general.
- 1356. Residential uses in general.
- 1357. Business, commercial, and industrial uses in general.
- 1358. Architectural and structural designs.
- 1359. — In general.
- 1360. — Family or multiple dwellings.
- 1361. Agricultural uses, woodlands and rural zoning.
- 1362. Animals; stables and kennels.
- 1363. Automobile-related uses.
- 1364. — In general.
- 1365. — Sales and service.

**414. ZONING AND PLANNING****VIII. PERMITS, CERTIFICATES,  
AND APPROVALS.(Cont'd)**

- 1366. — Auto service/retail store combinations.
- 1367. — Garages and parking.
- 1368. Aviation and airports.
- 1369. Churches and religious uses.
- 1370. Entertainment and recreation; theaters and clubs.
- 1371. Fences and hedges.
- 1372. Hospitals, clinics, and other health-related facilities.
- 1373. — In general.
- 1374. — Abortion and birth control facilities.
- 1375. — Alcohol and drug treatment.
- 1376. — Mental health facilities.
- 1377. Hotels, lodging, and short-term rentals.
- 1378. Landfills and waste disposal; junkyards.
- 1379. Maps, plats, and plans; subdivisions.
- 1380. — In general.
- 1381. — Filing or approval requirement.
  - (1). In general.
  - (2). As condition to conveyance.
  - (3). As condition to grant of building permit.
  - (4). Street access as condition to grant of building permit.
  - (5). Determination of necessity for approval; classification.
  - (6). Other particular considerations.
- 1382. — Conditions and agreements.
  - (1). In general.
  - (2). Streets, improvements and utilities.
  - (3). Conveyance or dedication.
  - (4). Fees, bonds and in lieu payments.
  - (5). Liability on bonds.
  - (6). Other particular conditions or agreements.
- 1383. — Grounds for grant or denial; conformity to regulations.
  - (1). In general.
  - (2). Streets and roads; traffic considerations.
  - (3). Architectural and structural designs; area and lot considerations.
  - (4). Public utilities; water and sewage considerations.

**VIII. PERMITS, CERTIFICATES,  
AND APPROVALS.(Cont'd)**

- (5). Other particular considerations.
  - 1384. Mining and minerals; sand and gravel.
  - 1385. Mobile homes; trailer parks.
  - 1386. Mortuaries, cemeteries, and mausoleums.
  - 1387. Prisons, jails, and rehabilitative institutions.
  - 1388. Public and low-income housing.
  - 1389. Residential facilities and daycare.
  - 1390. Restaurants and food services.
  - 1391. Schools and education.
  - 1392. Signs and billboards.
  - 1393. Sexually-oriented businesses; nudity.
  - 1394. Stores and sales.
  - 1395. — In general.
  - 1396. — Shopping centers and malls.
  - 1397. — Alcoholic beverages.
  - 1398. — Firearms.
  - 1399. Telecommunications towers and facilities.
  - 1400. Warehousing and storage.
  - 1401. Water-related uses and regulations.
  - 1402. Particular prior or nonconforming uses.
  - 1403. Other particular uses.
- (B) PROCEEDINGS ON PERMITS, CERTIFICATES,  
OR APPROVALS.**
- 1410. In general.
  - 1411. Nature of proceedings; legislative, judicial, or administrative action.
  - 1412. Persons entitled to apply.
  - 1413. Application; plans and specifications.
  - 1414. Consent or objection of adjacent owners.
  - 1415. Report or recommendation of board or officer.
  - 1416. — In general.
  - 1417. — Maps, plats, or plans; subdivisions.
  - 1418. Notice and hearing.
  - 1419. — In general.
  - 1420. — Notice.
  - 1421. — Hearings in general.
  - 1422. — Evidence and fact questions.
  - 1423. — Access; open meetings.
  - 1424. Determination.
  - 1425. — In general.



**414. ZONING AND PLANNING****VIII. PERMITS, CERTIFICATES,  
AND APPROVALS.(Cont'd)**

- 1426. — Scope of inquiry and matters considered.
- 1427. — Voting; bias and disqualification.
- 1428. — Time for determination.
- 1429. — Findings, reasons, conclusions, minutes or records.
- 1430. Rehearing or reconsideration.
- 1431. Administrative review.
- 1432. — In general.
- 1433. — Nature and form of remedy and jurisdiction.
- 1434. — Standing to appeal.
- 1435. — Exhaustion of remedies.
- 1436. — Procedure in general; timeliness.
- 1437. — Hearing and evidence.
- 1438. — Scope of review.
- 1439. — Determination.
- 1440. Fees and charges.

**(C) EFFECT OF DETERMINATION OF PERMITS,  
CERTIFICATES, OR APPROVALS;  
REVOCATION.**

- 1445. Effect of determination in general; res judicata and collateral estoppel.
- 1446. Successive applications.
- 1447. Form, requisites, and validity of permit or certificate in general.
- 1448. Construction and operation.
- 1449. — In general.
- 1450. — Maps, plats, or plans; subdivisions.
- 1451. Vested or property rights.
- 1452. Effect of violation of regulations.
- 1453. Duration of rights.
- 1454. Revocation or modification.
- 1455. — In general.
- 1456. — Grounds in general.
- 1457. — Illegality of permit.
- 1458. — Proceedings.
- 1459. — Maps, plats, or plans; subdivisions.
- 1460. Effect of change in regulations on permission granted.
- 1461. Tentative or preliminary approval.

**IX. VARIANCES AND EXCEPTIONS.****(A) IN GENERAL.**

- 1465. Nature and necessity in general.

**IX. VARIANCES AND EXCEPTIONS.(Cont'd)**

- 1466. Variance and exception distinguished.
- 1467. Permit, variance and alteration of regulations distinguished.
- 1468. Area and use variances distinguished.
- 1469. Power to grant in general.
- 1470. Nature and extent of power.
- 1471. Limitations on and sparing exercise of power.
- 1472. Right to variance or exception, and discretion.
- 1473. Grounds for grant or denial in general.
- 1474. Public interest or welfare.
- 1475. Harmony with, or impairment of regulations or plan.
- 1476. Effect of other applications or nonconforming uses.
- 1477. Hardship, loss, or injury.
- 1478. — In general.
- 1479. — Necessity of showing.
- 1480. — What constitutes in general.
- 1481. — Unique or peculiar hardship in general.
- 1482. — Self-created hardship; prior knowledge.
- 1483. — Profit or disadvantage; financial considerations.
- 1484. Proximity to other areas.
- 1485. Consent or objection of others.
- 1486. Conditions attached to grant.
- 1487. Residential uses in general.
- 1488. Business, commercial, and industrial uses in general.
- 1489. Architectural and structural designs.
- 1490. — In general.
- 1491. — Area variances in general.
- 1492. — Building or setback lines.
- 1493. — Height of buildings or structures.
- 1494. — Frontage requirements.
- 1495. — Family or multiple dwellings.
- 1496. Agricultural uses, woodlands and rural zoning.
- 1497. Animals; stables and kennels.
- 1498. Automobile-related uses.
- 1499. — In general.
- 1500. — Sales and service.
- 1501. — Auto service/retail store combinations.
- 1502. — Garages and parking.



**414. ZONING AND PLANNING****IX. VARIANCES AND EXCEPTIONS.(Cont'd)**

- 1503. Aviation and airports.
- 1504. Churches and religious uses.
- 1505. Entertainment and recreation; theaters and clubs.
- 1506. Fences and hedges.
- 1507. Hospitals, clinics, and other health-related facilities.
- 1508. — In general.
- 1509. — Abortion and birth control facilities.
- 1510. — Alcohol and drug treatment.
- 1511. — Mental health facilities.
- 1512. Hotels, lodging, and short-term rentals.
- 1513. Landfills and waste disposal; junkyards.
- 1514. Mining and minerals; sand and gravel.
- 1515. Mobile homes; trailer parks.
- 1516. Mortuaries, cemeteries, and mausoleums.
- 1517. Prisons, jails, and rehabilitative institutions.
- 1518. Public and low-income housing.
- 1519. Public utilities.
- 1520. Residential facilities and daycare.
- 1521. Restaurants and food services.
- 1522. Schools and education.
- 1523. Signs and billboards.
- 1524. Sexually-oriented businesses; nudity.
- 1525. Stores and sales.
- 1526. — In general.
- 1527. — Shopping centers and malls.
- 1528. — Alcoholic beverages.
- 1529. — Firearms.
- 1530. Telecommunications towers and facilities.
- 1531. Warehousing and storage.
- 1532. Water-related uses and regulations.
- 1533. Particular prior or nonconforming uses.
- 1534. Other particular uses.

**(B) PROCEEDINGS FOR VARIANCES AND EXCEPTIONS.**

- 1535. In general.
- 1536. Nature of proceedings; legislative, judicial, or administrative action.
- 1537. Persons entitled to apply.
- 1538. Application.
- 1539. Notice and hearing.
- 1540. — In general.
- 1541. — Notice.

**IX. VARIANCES AND EXCEPTIONS.(Cont'd)**

- 1542. — Hearings in general.
- 1543. — Evidence in general.
- 1544. — Presumptions and burden of proof.
- 1545. — Weight and sufficiency of evidence.
- 1546. — Access; open meetings.
- 1547. Determination.
- 1548. — In general.
- 1549. — Scope of inquiry and matters considered.
- 1550. — Voting; bias and disqualification.
- 1551. — Time for determination.
- 1552. — Findings, reasons, conclusions, minutes or records.
- 1553. Rehearing or reconsideration.
- 1554. Administrative review.
- 1555. — In general.
- 1556. — Nature and form of remedy and jurisdiction.
- 1557. — Standing to appeal.
- 1558. — Exhaustion of remedies.
- 1559. — Procedure in general; timeliness.
- 1560. — Hearing and evidence.
- 1561. — Scope of review.
- 1562. — Determination.

**(C) EFFECT OF DETERMINATION OF VARIANCE OR EXCEPTION; REVOCATION.**

- 1565. Effect of determination; res judicata and collateral estoppel.
- 1566. Successive applications.
- 1567. Duration of rights.
- 1568. Revocation or modification.

**X. JUDICIAL REVIEW OR RELIEF.****(A) IN GENERAL.**

- 1570. Review in general.
- 1571. Exhaustion of administrative remedies; primary jurisdiction.
- 1572. Nature and form of remedy.
- 1573. — In general.
- 1574. — Appeal.
- 1575. — Certiorari.
- 1576. — Statutory proceeding.
- 1577. — Suit in equity.
- 1578. — Injunction.
- 1579. Jurisdiction.

**414. ZONING AND PLANNING****X. JUDICIAL REVIEW OR RELIEF.(Cont'd)**

- 1580. Decisions reviewable.
- 1581. — In general.
- 1582. — Finality; ripeness.
- 1583. — Mootness.
- 1584. Right of review; standing.
- 1585. — In general.
- 1586. — Validity of regulations.
- 1587. — Modification or amendment.
- 1588. — Permits, certificates, and approvals.
- 1589. — Variances or exceptions.
- 1590. — Waiver or estoppel.
- 1591. — Private rights of action.
- 1592. Preservation before board or officer of grounds of review.
- 1593. Interim relief; preliminary injunction.
- 1594. Record.

**(B) PROCEEDINGS.**

- 1598. In general.
- 1599. Bonds, filing fees and stay of proceedings.
- 1600. Parties.
- 1601. — In general.
- 1602. — Necessary and indispensable parties.
- 1603. — Intervention and new parties.
- 1604. Time for proceedings.
- 1605. — In general.
- 1606. — Prematurity.
- 1607. — Commencement of limitation period.
- 1608. — Effect of delay.
- 1609. Process or notice and appearance.
- 1610. Pleading.
- 1611. — In general.
- 1612. — Petition, complaint or application.
- 1613. — Answer or return; reply.
- 1614. — Issues, proof, and variance.
- 1615. Assignment of errors and briefs.
- 1616. Hearing and argument.
- 1617. Dismissal.

**(C) SCOPE OF REVIEW.****1. IN GENERAL.**

- 1620. In general.
- 1621. Regulations in general.

**X. JUDICIAL REVIEW OR RELIEF.(Cont'd)**

- 1622. Classification of property; size and boundary of zones.
- 1623. Modification or amendment; rezoning.
- 1624. Decisions of boards or officers in general.
- 1625. Permits, certificates, and approvals in general.
- 1626. Variances and exceptions in general.
- 1627. Arbitrary, capricious, or unreasonable action.
- 1628. — In general.
- 1629. — Regulations.
- 1630. — Modification or amendment; rezoning.
- 1631. — Decisions of boards or officers in general.
- 1632. — Permits, certificates, and approvals.
- 1633. — Variances and exceptions.
- 1634. Public health, safety, morals, or welfare.
- 1635. Illegality.
- 1636. Motives and good faith.
- 1637. Wisdom, judgment, or opinion.
- 1638. — In general.
- 1639. — Regulations in general.
- 1640. — Classification of property.
- 1641. — Modification or amendment; rezoning.
- 1642. — Decisions of boards or officers in general.
- 1643. — Permits, certificates, and approvals.
- 1644. — Variances and exceptions.
- 1645. Matters of discretion.
- 1646. — In general.
- 1647. — Regulations in general.
- 1648. — Modification or amendment; rezoning.
- 1649. — Decisions of boards or officers in general.
- 1650. — Permits, certificates, and approvals.
- 1651. — Variances and exceptions.
- 1652. Matters or evidence considered.
- 1653. Harmless error.
- 1654. Waiver of error on review.

**414. ZONING AND PLANNING****2. ADDITIONAL PROOFS AND TRIAL DE NOVO.**

- 1655. Additional proofs.
- 1656. De novo review in general.
- 1657. Admissibility of evidence.
- 1658. Weight and sufficiency of evidence in general.
- 1659. — In general.
- 1660. — Permits, certificates, and approvals.
- 1661. — Variances and exceptions.
- 1662. Validity of regulations, sufficiency of evidence.
- 1663. — In general.
- 1664. — Degree of proof.
- 1665. — Reasonableness.
- 1666. — Classification of property; size and boundary of zones.
- 1667. — Procedural requirements.
- 1668. Amendment or rezoning, sufficiency of evidence.
- 1669. — In general.
- 1670. — Reasonableness.
- 1671. — Spot zoning.
- 1672. Questions for jury.

**3. PRESUMPTIONS AND BURDENS.**

- 1675. In general.
- 1676. Validity of regulations in general.
- 1677. Reasonableness of regulations.
- 1678. Public health, safety, morals, or general welfare.
- 1679. Modification or amendment; rezoning.
- 1680. Decisions of boards or officers in general.
- 1681. Permits, certificates, and approvals.
- 1682. Variances and exceptions.
- 1683. Rebuttal of presumptions.
- 1684. Burden of showing grounds for review.
- 1685. — In general.
- 1686. — Regulations in general.
- 1687. — Arbitrary, capricious, or unreasonable nature of regulations.
- 1688. — Public health, safety, morals, or general welfare.
- 1689. — Modification or amendment; rezoning.
- 1690. — Permits, certificates, and approvals.
- 1691. — Variances and exceptions.

**4. QUESTIONS OF FACT.**

- 1695. Extent of review in general.
- 1696. Credibility determinations.
- 1697. Determination supported by evidence.
- 1698. Substantial evidence in general.
- 1699. Weight of evidence.
- 1700. Particular questions.
- 1701. Validity of regulations.
- 1702. Modification or amendment; rezoning.
- 1703. Permits, certificates, and approvals.
- 1704. Variances and exceptions.
- 1705. Telecommunications issues.

**(D) DETERMINATION.**

- 1710. In general.
- 1711. Effect of change of law or facts.
- 1712. Time for determination.
- 1713. Affirmance, modification, reversal, vacation, or setting aside.
- 1714. Affirmative relief from court.
- 1715. — In general.
- 1716. — Regulations and rezoning.
- 1717. — Permits, certificates, and approvals.
- 1718. — Variances and exceptions.
- 1719. — Injunctive relief.
- 1720. — Monetary relief.
- 1721. — Public and low-income housing; builders' remedies.
- 1722. Remand.
- 1723. — In general.
- 1724. — Directing further action by local authority.
- 1725. Findings and statement of decision.
- 1726. Reconsideration and modification.
- 1727. Effect of decision.
- 1728. — In general.
- 1729. — Res judicata and collateral estoppel.
- 1730. Costs; attorney fees.

**(E) FURTHER REVIEW.**

- 1735. In general.
- 1736. Decisions reviewable.
- 1737. — In general.
- 1738. — Finality; ripeness.
- 1739. — Mootness.
- 1740. Right of review and parties.

**414. ZONING AND PLANNING****X. JUDICIAL REVIEW OR RELIEF.(Cont'd)**

- 1741. Preservation below of grounds of review.
- 1742. Record, assignment of errors and briefs.
- 1743. Proceedings; time limitations.
- 1744. Scope and extent of review.
- 1745. — In general.
- 1746. — Review of local authority or lower court.
- 1747. — Questions or errors of law.
- 1748. — Arbitrary, capricious, or unreasonable action.
- 1749. — Wisdom, judgment, or opinion.
- 1750. — Matters of discretion.
- 1751. — Harmless error.
- 1752. — De novo review.
- 1753. — Presumptions and burdens.
- 1754. — Questions of fact; findings.
- 1755. Determination and disposition.
- 1756. — In general.
- 1757. — Affirmance, modification, reversal, vacation, or setting aside.
- 1758. — Affirmative relief from court.
- 1759. — Remand and further proceedings below.
- 1760. — Effect of decision.
- 1761. — Costs; attorney fees.

**XI. ENFORCEMENT OF REGULATIONS.**

- 1765. In general.
- 1766. Power and duty to enforce.
- 1767. Defenses to enforcement.
- 1768. — In general.
- 1769. — Ineffectiveness of remedy; mootness.
- 1770. — Estoppel or inducement.
- 1771. — Ignorance of the law.
- 1772. — Waiver, consent or agreement.
- 1773. — Invalidity of regulation in general.
- 1774. — Constitutional and civil rights in general.
- 1775. — Selective enforcement and discrimination.
- 1776. — Uses preexisting regulation.

**XI. ENFORCEMENT OF REGULATIONS.(Cont'd)**

- 1777. Mode of enforcement and proceedings in general.
- 1778. Time for proceedings.
- 1779. Availability and exhaustion of other remedies.
- 1780. Persons entitled to sue.
- 1781. — In general.
- 1782. — Private persons.
- 1783. — Public bodies and officials.
- 1784. Parties.
- 1785. Pleading, petition, or indictment.
- 1786. Notice and hearing.
- 1787. — In general.
- 1788. — Notice and process.
- 1789. — Hearing and trial in general.
- 1790. — Evidence in general.
- 1791. — Admissibility.
- 1792. — Presumptions and burden of proof.
- 1793. — Weight and sufficiency in general.
- 1794. — Weight and sufficiency, equitable relief.
- 1795. — Weight and sufficiency, offenses, penalties, and fines.
- 1796. Determination, orders, and findings in general.
- 1797. Rehearing or reconsideration.
- 1798. Opportunity to cure violation.
- 1799. Injunctive and other equitable or affirmative relief.
- 1800. — In general.
- 1801. — Architectural and structural designs.
- 1802. — Automobile service, garages and parking.
- 1803. — Other particular uses.
- 1804. — Preliminary or temporary injunction.
- 1805. Enforcement of orders; contempt.
- 1806. Damages.
- 1807. Penalties and fines.
- 1808. Imprisonment and probation.
- 1809. Costs and attorney fees.
- 1810. Effect of determination.
- 1811. Review.